PETITIONER:
DELHI CLOTH & GENERAL MILLS CO., LTD.

Vs.

RESPONDENT:
WORKMEN AND ORS. ETC.

DATE OF JUDGMENT:
27/09/1968

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1970 AIR 919 1969 SCR (2) 307
CITATOR INFO :
RF 1970 SC 343 (26)
E&R 1970 SC1421 (11,12,16,17,19)
RF 1970 SC1967 (3,4)
F 1973 SC2344 (2,3)
R 1977 SC 941 (15)
RF 1980 SC1944 (5)
RF 1981 SC 852 (16,18)
R 1987 SC 447 (12)

ACT:
Industrial Dispute--Gratuity Scheme--When region-cum-industry principle is applicable--Whether gratuity should be related to basic wage or consolidated wage--Whether conditions prevailing in the industry in the whole country could be taken into consideration--Whether age of superannuation should also be fixed--When misconduct of workmen does not affect gratuity--When payable to badli workmen--Date of operation of award--Considerations for fixing--'Average of basic wage', meaning of.

HEADNOTE:
In the Delhi region there are four textile units. namely, the D.C.M., the S.B.M., the B.C.M., and the A.T.M. The D.C.M. and the S.B.M. are under one management. Since 1940 they had also a common retirement benefit scheme with a scale of gratuity. The ' workmen in all the units were receiving basic wages plus dearness allowance. On March 4, 1958, an industrial dispute between the four units and their workmen was referred to the Industrial Tribunal and one of the matters in dispute related to gratuity. The Tribunal in its award framed two schemes relating to the payment of gratuity, one relating to D.C.M. and S.B.M., and the other, to B.C.M. and A.T.M. They were made operative from January 1, 1964. Both employers and employees appealed to this Court. On the questions: (1) Whether in view of a settlement between the management of A.T.M. and its workmen it was open to the Tribunal to ignore the settlement and impose the scheme on the management; (2) Whether in view of the unstable financial condition of A.T.M. the burden of payment of gratuity on A.T.M. was excessive; (3) Whether a uniform scheme applicable to the entire industry on the

region-cum-industry basis should have been adopted instead of schemes applicable to individual units; (4) Whether in determining the quantum of gratuity, basic wage alone should be taken into account and not the consolidated wage including dearness allowance; (5) Whether in deciding this question, an overall view of similar and uniform conditions in the industry in different centers in the country, could he taken into consideration; (6) Whether it was not necessary for the Tribunal to fix the age of superannuation when introducing a gratuity scheme; (7) Whether gratuity should have been awarded even in cases of dismissal for misconduct; (8) Whether provision should have been made for payment of gratuity to badli workmen irrespective of the number of days for which they worked in a year; (9) Whether the schemes should have been made operative from the date of reference; and (10) What is the scope of the expression 'average of the basic wage'..

HELD: (1) The settlement between the workmen and management of A.T.M. did not bar the jurisdiction of the Tribunal to make the Scheme of gratuity applicable to A.T.M. [340]

Under the settlement all that was agreed to was, that an award should be made and if it he found that A.T.M. acquired financial stability then it would be liable to pay the gratuity to its workmen. It was not agreed that the proceedings before the Tribunal should be dropped and that it
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was only after A.T.M. became financially stable that a fresh claim should be made by the workmen. [320 D-F]

(2) The trading accounts of A.T.M. showed that since 1959-60 the Mills had achieved some stability, and that by 1961-62 all previous losses were wiped out. Therefore, though it was a much weaker unit than the others, it was financially stable from the date on which the scheme became operative. [321 A-C]

(3) A unit-wise approach in framing the gratuity scheme 'for the four units was appropriate in the present case. [323 B--C; 340 D--E]

No inflexible rule has been laid down by this Court that gratuity schemes should he framed only on the region-cure-industry principle. In the present case, if a common scheme was framed for the entire industry in Delhi for all four units, in view of the financial condition of A.T.M., the benefits under such a scheme would be not only low, but would be lower than the existing benefits available to workmen in the D.C.M. and S.B.M. Units. [321 C--D, H; 322 E---F, H]

Garment Cleaning Works v. Its Workmen, [1962] 1 S.C.R. 711: [1961] 1 L.L.J. 513 and Burhanpur Tapti Mills Ltd. v. Burhanpur Tapti Mills Mazdoor Sangh, [1965] 1 L.L.J. 453, followed.

Bharatkhand Textile Mfg. Co. v. Textile Labour Association [1960] 3 S.C.R. 329, explained.

(4) The Tribunal was in error in relating the gratuity awardable to the workmen to the consolidated wage instead of the basic wage. [340 G]

(a) In determining the scope of an industrial reference words used, either in the claim or in the order of reference, should not necessarily be given the meaning they have under the Industrial Disputes Act. Therefore, merely because the expression "wages" in the Act includes dearness allowance, the Tribunal could not base the gratuity scheme on consolidated wages. [325 D--F]

(b) An industrial tribunal cannot adjudicate on disputes

not referred; but when called upon to adjudicate' whether a certain scheme, on the terms indicated in the reference should be framed, such basic guidance does not limit its jurisdiction. The Tribunal, in this case, was in error in thinking that in determining the rate of gratuity it was limited to the number of days of service in the order of reference as the applicable multiple. On that assumption, since the gratuity would be too low if only basic wage was chosen, it was not justified in choosing consolidated wage. The proper procedure would have been to choose only the basic wage and fix upon a larger number of days of service as the appropriate multiple. [327 E--H]

(c) The decisions of this Court in May and Baker (India) Ltd. v. their Workmen, [1961] II L.L.J. 94 (S.C.), British India Corporation v. Its Workmen, [1965] II L.L.J. 556 (S.C.), British Paints (India) Ltd. v. Its Workmen, [1966] 1 L.L.J. 407 (S.C.), Hindustan Antibiotics Ltd. v. Their Workmen, [1967] 1 L.L.J. 114- (S.C.) and Remington Rand of India v. The Workmen, [1968] 1 L.L.J. 542 (S.C.) are conflicting and no principle can be extracted as to whether basic wage or consolidated wage should be considered for purposes of gratuity. Ordinarily, in those circumstances, this Court would not have interfered with the conclusion of the Tribunal choosing consolidated wage; but, the Tribunal had failed
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to take into account the prevailing pattern in the textile industry all over the country. It is country-wide industry and in that industry, gratuity has never been granted on the basis of consolidated wages. [329 C--F; 330 A]

(d) The primary object of industrial adjudication is to adjust the relations between employers and employees with the object of promoting industrial peace. If the basic wage alone is taken for purposes of gratuity, it would produce in the present case, a scheme which deprives the workmen of the D.C.M. and S.B.M. of benefits which had been granted to them under the voluntary scheme introduced by the management of those two units and disturb industrial peace therein. But on that account, the Tribunal was not justified in introducing a fundamental change in the concept of gratuity granted by numerous schemes in the textile industry all over the country. The appropriate remedy is to frame a scheme consistent with the normal pattern prevailing in the industry and introduces reservations protecting benefits already acquired. [326 C-F]

(e) In the report of the Central Wage Board for the cotton textile industry, also, gratuity was directed to be given on the basis of wages excluding dearness allowance. [330 G]

(f) In D..C.M. Chemical Works v. Its Workmen, [1962] 1 L.L.J. 388 (S.C.) this Court affirmed the award relating gratuity to consolidated wages. Though the unit also belonged to D.C.M. it is a unit entirely independent of the textile unit. So, it cannot be regarded as an effective or persuasive precedent justifying variation from the normal pattern of gratuity schemes in operation in the textile industry all over the country. [331 H; 332 A--B, D-E]

(5) If all over the country, in textile centres, payment of gratuity. is related to the basic wage and not to the consolidated wage any innovation Delhi region alone is likely to give rise to serious industrial disputes in other centres in the country. If maintenance of industrial peace is a governing principle of industrial adjudication, it would be wise to maintain a 'reasonable degree of uniformity in the diverse units all over the country and not to make a

fundamental departure from the prevailing pattern.the basic wage is low in all other centres, and if it does not play an important part, there is no reason why it should play, only in the Delhi region, a decisive part so as to make a vital departure from schemes in operation in other centres in the country. The acceptance of the award the Tribunal in the present case is likely to create conditions of great instability in other parts of the country in the textile industry. Therefore, the Tribunal's award granting gratuity on the basis of consolidated wage could not be upheld. [332 G--H; 333 A--E]

(6) It is not necessary, for a gratuity scheme to be effective, that here should be fixation of the age of superannuation. [323 C--D]

Burhanpur Tapti Mills Case, [1965] 1 L.L.J. 453, referred

Further, on the terms of the reference the plea of the employers to fix the age of superanuation was beyond the scope of the 'reference, nor was such fixation incidental to the framing of the scheme. [323 H 324 c]

(7) The object of providing a gratuity scheme is to provide a retiring benefit to workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer.It is therefore not correct to say that no misconduct, however grave, may not be visited with forfeiture of gratuity. Misconduct could be (a)

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technical misconduct which leaves no trail of indiscipline; (b) misconduct resulting in damage to the employers' property which may be compensated by forfeiture of gratuity or part thereof; and (c) serious misconduct such as acts of violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment which, though not directly causing damage, is conducive to grave indiscipline. The first should involve no forfeiture, the second may involve forfeiture of an amount equal to the loss directly suffered by the employer in consequence of the misconduct, and the third will entail forfeiture of gratuity due to the workmen. [324 F--G; 336 D--F; 341 A--B]

Garment Cleaning Works v. Its Workmen, [1962] 1 S.C.R. 711; (1961) I L.LJ. 513, Wenger & Ca. v. Its Workmen, [1963] II L.L.J. 403 (S.C.), Motipur Zamindari (P) Ltd. v. Their Workmen, [1965] II L.LJ. 139 (S.C.) Calcutta Insurance Co. v. Their Workmen, [1967] II L.LJ. 1 (S.C.), and Remington Rand of India v. The Workmen, [1968] I L.L.J. 542 (S.C.). referred to.

(8) The award does not require to be modified with regard to badli workmen.

If gratuity is to be paid)for service rendered then there are no grounds for holding that a badli workman must be deemed to have rendered service giving rise W a claim of gratuity, merely because, for maintaining his name on the record of the badli workmen, he is required to attend the mills. [338 A--B]

(9) The award needs no modification with regard to the date of commencement of the schemes.

The liability of A.T.M. to pay gratuity arose after it acquired sufficient financial stability and the unit acquired financial stability only from January 1, 1964. If in respect of the A.T.M. which had no scheme. gratuity becomes operative from January 1, 1964, there is no reason why respect of B.C.M. any different rule should be provided for. As regards D.C.M. and S.B.M. there was already a more advantageous gratuity scheme in operation and the workmen in

those two units were not prejudiced by directing the scheme applicable to them, to commence from January 1, 1964. If effect was given to the schemes before January 1, 19'64, it may rake up cases in which workmen have left the establishment many years ago and it would not be conducive to industrial peace to allow such questions to be raised after a long delay. In the absence of any principle, the matter must be decided on considerations of expediency. [338 G--H; 339 A--D]

(10) The expression 'average of the basic wage' means wage earned by a workman during a month, divided by the number of days for which he had worked, and multiplied by 26 in order to arrive at the monthly wage for the computation of gratuity payable. [333 C--D]

[Appropriate directions modifying the schemes were accordingly given.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2168, 2569, of 1966, 76, 123 and 560 of 1967.

Appeals by special leave from the Award dated June 30, 1966 of the Industrial Tribunal, Delhi in I.D. No. 70 of 1958.

S.T. Desai, Rameshwar Nath and Mahinder Narain, for the appellant (in C.A. No. 2168 of 1966) and respondents Nos. 1 and 2 (in C.As. Nos. 123 and 560 of 1967).

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H.R. Gokhale, A.K. Sen, R.P. Kapur and 1. N. Shroff, for the appellant (in C.A. No. 256,9 of 1966) and respondent no. 3 (in C.As. Nos. 123 and 560 of 1967).

B. Sen, 1. D. Gupta, M.N. Shroff for 1. N. Shroff, for the appellant (in C.A. No. 76 of 1967).

M.K. Ramamurthi, Madan Mohan, Shyamala Pappu and Vineet Kumar, for the appellant (in C.A. No. 123 of 1967), respondents Nos. 1 (a) and 4(a) (in C.A. No. 2168 of 1966), respondent No. 1 (in C.A. No. 2569 of 1966), respondent No. 1 (in C.A. No. 76 of 1967) and respondent No. 5 (in C.A. No. 560 of 1967).

V.C. Parashar and O.P. Sharma, for the appellant (in C.A. No. 560 of 1967) respondents Nos. 1 (b) and 4(b) (in C.A. No. 2168 of 1966) respondent No. 2 (in C.A. No. 2569 of 1968) and respondent No. 2 (in C.A. No. 76 of 1967).

The Judgment of the Court was delivered by

Shah, J. These appeals arise out of an award made by the Industrial Tribunal, Delhi, in I.D. Reference No. 70 of 1958. The first three appeals are filed by the employers, and the last two by the employees. By its award the Industrial Tribunal (Delhi, has framed two schemes relating to payment of gratuity to the workmen employed in four textile units in the Delhi region. The employers and the workmen are dissatisfied with the schemes and they have filed these appeals challenging certain provisions of the schemes.

In the Delhi region there are four textile units; the Delhi Cloth Mills which will be referred to. as D.C.M.; Swatantra Bharat Mills--which will be referred to as S.B.M.; Birla Cotton Mills-which will be referred to as B.C.M. and Ajudhia Textile Mills-which will be referred to as A.T.M. The D.C.M. and S.B.M. are under one management. On March 4, 1958, the Chief Commissioner of Delhi made a reference under ss. 10(1)(d) and 12(5) of the Industrial Disputes Act, 1947, relating to four matters in dispute, first of which is as follows:

"Whether a gratuity for retirement benefit scheme should

be introduced for all workmen on the following lines and what directions are necessary in this respect ?

1. for service less than 5 years---Nil.
2. for service between 5-10 years--15 days' wages for every year of service.
3. for service between 10- 15 years--21 days' wages for every year of service.

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4. for service over 15 years one month's wages for every year of service."

The reference related to workmen only and did not apply to the clerical staff or mistries.

There are two workmens' Unions in the Delhi region--the Kapra Mazdoor Ekta Union hereinafter called 'Ekta Union', and the other, the Textile Mazdoor Union. The Ekta Union made a claim principally for fixation of gratuity in addition to the benefit of provident fund admissible to the workmen under the Employees Provident Fund Act, to be computed on the consolidated wages inclusive of dearness allowance. The Ekta Union submitted by its statement of claim that a gratuity scheme based on the region-cum-industry principle i.e. a uniform scheme applicable to all the four units be framed. The Textile Mazdoor Union also supported the claim for the framing of a gratuity scheme on the basis of the consolidated wages of workmen but claimed that the scheme should be unit-wise. At the trial, it appears that both the Unions pressed for a unit-wise scheme of gratuity.

The Tribunal entered upon the reference in respect of the fixation of gratuity scheme in February 1964 and made an award on June 30, 1966, operative from January 1, 1964. The award was published on August 4, 1966. By the award two schemes were framed one relating to the D.C.M. and S.B.M., and another relating to the B.C.M. and A.T.M. Under the second scheme the digit by which the number of completed year of service was to be multiplied in determining the total gratuity was smaller than the digit applicable in the case of the D.C.M. and the S.B.M. The distinction was made between the two sets of units, because the D.C.M. and S.B.M. were, in the view of the Tribunal, more prosperous units than the D.C.M. and A.T.M. The A.T.M., it was found, was a newcomer in the field of textile manufacture, and had for many years been in financial difficulties.

The D.C.M. employs more than 8,000 workmen in its textile unit; the S.B.M. has on its roll 5,000 workmen; the B.C.M. has 6,271 workmen and the A.T.M. has 1,500 workmen. The D.C.M. and S.B.M. have a common retirement benefit scheme in operation since the year 1940. Under the scheme gratuity payable to workmen is determined by the length of service before retirement. The scheme of gratuity in operation in the D.C.M. and S.B.M. is as that,

> "In case of retirement from service of the Mills as a result of physical disability, due to over-age or on account of death after a minimum of seven years'.

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service in the concern:

7 years	....	Rs. 350/-
8 years	....	Rs. 425/-
9 years	....	Rs. 500/-
10 years	....	Rs. 575/-
11 years	....	Rs. 650/-
12 years	....	Rs. 725/-
13 years	....	Rs. 800/-
14 years	....	Rs. 875/-

15 years .... Rs. 950/-
16 years .... Rs. 1,050/-
17 years .... Rs. 1,150/-
18 years .... Rs.. 1,250/-
19 years .... Rs. 1,350/-
20 years .... Rs. 1'500/-

The scale of gratuity, it is clear, is independent of the individual wage scale of the workman. In the B.C.M. and A.T.M. units there are no such schemes.

Till the year 1958 there were no standardised wages in the textile industry. According to the Report of the Central Wage Board for the Cotton Textile Industry which was published on November 22, 1959, there were in India 39 regions in which the textile industry was located. The basic monthly wages of the workmen in the year 1958 varied between Rs. 18/- in Patna and Rs. 30/- in various centers like Bombay, Indore, Madras, Coimbatore, Madurai, Bhiwani, Hissar, Ludhiana, Cannanore and certain regions in Rajasthan and Delhi. The Wage Board recommended in Paragraph-106 of its Report:

> "The Board has come to the conclusion that an increase at the average rate of Rs. 8 per month per worker shall be given to all workers in mills of category I from 1st January 1960, and a further flat increase of Rs. 2 per month per worker shall be given to them from 1st January 1962. Likewise an increase at the average rate of Rs. 6 per month per worker shall be given to all the workers in mills of category 11 from 1st January 1960, and a further flat increase of Rs. 2 per month per worker shall be given to them from 1st January 1962. These increases are subject to the condition that the said sums of Rs. 8 and Rs. 6 shall ensure not less than Rs. 7 and Rs. 5 respectively to the lowest paid, and that the increase of Rs. 2 from 1st January 1962 shall be flat for all."

Category I included the Delhi region. Since January 1, 1962, the basic minimum wage in the Delhi region is, therefore Rs. 40/Sup. CI/69--3
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according to the recommendations of the Wage Board. In Bombay City and Island (including Kurla), the basic wage, according to the Report of the Wage Board, was also Rs. 30/and by the addition of Rs. 10 the basic wage of a workman came to Rs. 40/-. The workmen in other important textile centres also get the same rates.

The Tribunal was of the view that the average basic wage of the workmen is Rs. 60/- since the implementation of the Wage Board in the Delhi region. No argument was advanced before this Court challenging the correctness of that assumption, by the employers or the workmen. It was also common ground that practically uniform basic wage levels prevail in all the large textile centres like Bombay, Ahmedabad, Coimbatore and Indore.

Besides the basic wage the workmen receive dearness allowance under diverse awards made by the Industrial Tribunals which "seek to neutralize the cost of living index." There is also a provident fund scheme under the Employees. Provident Fund Act, 1962, whereunder 8-1/3% of the basic wage and the dearnear allowance and the retaining allowance for the time being in force is contributed by the employee. Besides, there is a right to retrenchment compensation under the Industrial Disputes Act, 1947 (s.

25 FFF) and the Employees Insurance Scheme.. In view of the observations of this Court in Burhanpur Tapti Mills Ltd. v. Burhanpur Tapti Mills Mazdoor Sangh(1), that "It is no longer open to doubt that a scheme of gratuity can be introduced in concerns where there. already exist other schemes such as provident fund or retrenchment compensation. This has been ruled in a number of cases of this Court and recently again in Wenger & Co. and others v. Their Workmen(2), and Indian Hume Pipe Company Ltd. v. Their Workmen(3). It is held in these cases that although provident fund and gratuity are benefits available at retirement they are not the same ,and one can exist with the other", no serious argument was advanced that the existence of these additional benefits disentitled the workmen to obtain benefits under a gratuity scheme if the employer is able to meet the additional burden.

But on behalf of all the employers it was, urged that (1) in determining the quantum of gratuity, basic wage alone could be taken into account and not the consolidated wage; and (2) it was necessary for the Tribunal to fix when introducing a gratuity scheme the age of superannuation. On behalf of the D.C.M., S.B.M. and B.C.M. it was urged in addition, that a uniform scheme applicable to the entire industry on the region-cumindustry basis should have been adopted and not a scheme or schemes applicable to individual units. On behalf of the A.T.M.

(1) [1965] 1 L.L.J. 453, (2) [1963] II L.L.J. 403.
(3) [1959] II L.L.J. 830.

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it was urged that its financial condition is not and has never been stable and the burden of payment of gratuity to workmen dying or disabled or on voluntary retirement from service or when their employment is terminated is excessive and the Unit was unable, to bear that burden. It was also urged on behalf of the A.T.M. that in view of a settlement which was reached between the management and workmen it was not open to the Tribunal to ignore the settlement and to impose a scheme for payment of gratuity in favour of the workmen in this reference.

While broadly supporting the award of the Tribunal the workmen claim certain modifications. They claim that a shorter period of qualifying service for workmen voluntarily retiring should be provided, and gratuity should be worked out by the application of a larger multiple of days for each completed year of service; that the ceiling of gratuity should be related to a larger number of months' wages; that gratuity should be awarded for dismissal even for misconduct; that provision should be made for payment of gratuity to Badli workmen irrespective of the number of days for which they work in a year; that the expression "average of the basic wage" should be appropriately clarified to avoid disputes in the implementation of the gratuity scheme, and that the award should be made operative not from January 1, 1964, but from the date of the reference to the Tribunal.

The two schemes which have been flamed may be set out:

ANNEXURE 'A'

"Gratuity scheme applicable to the Delhi Cloth Mills and the Swatantra Bharat Mills.'

Gratuity will be payable to the employees concerned, in this reference, on the scale and subject to the conditions laid down below:

1. On the death of an employee while in the service of the mill company or on his becoming physically or mentally incapacitated for further service:

(a) After 5 years continuous service and less than 10 years' service---12 days' wages for each.completed year of service.

(b) After continuous service of 10 years--15 days' wages for each completed year of service.

The gratuity will be paid in each case under clauses 1(a) and 1(b) to the employee, his heirs or executors, or nominee as the case may

Provided that in no case will an employee, who is in service on the date on which this scheme is brought

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into operation be paid an mount less than what he would have been entitled to under the pre-existing scheme of the Employees' Benefit Fund Trust.

(ii) Provided further that the maximum payment to be made shall not exceed the equivalent of 15 months wages.

(iii) Provided further that gratuity under this scheme will not be payable to any employee who has already received gratuity under the preexisting scheme of the Employees' Benefit Fund Trust.

2. On voluntary retirement or resignation after 15 years' service--15 days' wages for each completed year of service.

Provided that the maximum payment to be made shall not exceed the equivalent of 15 months' wages.

3. On termination of service on any ground whatsoever except on the ground of misconduct As in clauses 1 (a) and 1 (b) above.

Provided that the maximum payment to be made shall not exceed the equivalent of 15 months' wages.

4. Definitions:

(a) 'Wages'

The term "wages" in the scheme will mean the average of the basic wage plus the dearness allowance drawn during the 12 months next preceding death, incapacitation, voluntary retirements, resignation or termination of service and will not include overtime wages.

(b) "Basic wages"

The term "basic wage" will have the meaning as defined in paragraph 110 of the Report of the First Central Wage Board for Cotton Textile Industry.

(c) "Continuous service" means un-interrupted service and includes service which may be interrupted on account of sickness, authorised leave, strike which is not illegal, lock-out or cessation of work which is not due to any fault on the part of the employee:

Provided that interruption in service upto six months' duration at any one time and

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months duration in the aggregate of the nature other than those specified above shall not cause the employee to lose the credit for previous service in the Mills for the purpose

of calculation of gratuity, but at the same time shall not entitle him to claim benefit of gratuity for the period of such interruption. Service for the purposes 'of gratuity will include service under the previous management whether in the particular mill or other sister mill under the same management.

(d) "Resignation"

The word "resignation" will include abandonment of service by an employee provided he Submits his resignation within a period of three months from the first day of absence without leave.

(e) "Length of service"

For counting "length of service:', fraction of a year exceeding six months shall count as one full year, and six months or less shah be ignored.

5. "Application for gratuity"

Any person eligible to claim payment of gratuity under this scheme shall, so far as possible, send a written application to the employer within a period of six months from the date its payment becomes due.

6. "Payment of gratuity"

The employer shall pay the amount of gratuity to the employee and in the event of his death before payment to the person or persons entitled to it under clause 1 above within a period of 90 days of the claim being presented to the employer and found valid.

7. "Claims by persons who are no longer in service"--

Claims by persons who are no longer in service of the Company on the date of the publication of this award shall not be entertained unless the claims are preferred within six months from the date of publication of this award.

8. "Badli service"

Gratuity shall be paid for only those years of Badli service in which the employee has worked for not less than 240 days.

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9. "Proof of incapacity"

In proof of physical or mental incapacity, it will be necessary to produce a certificate from any one of the Medical Authorities out of a panel to be jointly drawn up by the parties.

10. "Nomination"

(a) Each employee shall, within six months from the date of the publication of this award, make a nomination conferring the right to receive the amount of gratuity that may be due to him in the event of his death, before payment has been made.

(b) A nomination made under sub-clause (a) above may, at any time, be modified by the employee after giving a written notice of his intention of doing so. if the nominee pre-deceases the employee, the interest of the nominee shall revert to the employee who may make a fresh nomination in respect of such interest."

ANNEXURE 'B'

"Gratuity scheme applicable to the Birla Cotton Spg. & Wvg. Mills and the Ajudhia Textile Mills.

Gratuity will be payable to the employees concerned in this reference, on the scale and subject to the conditions laid down below:-

1. On the death o/an employee while in the service of the Mill company or on his becoming physically or mentally incapacitated for further service:

(a) After 5 years continuous service and less than 10 years service---One-fourth month's wages for each competed year of service.

(b) After continuous service of 10 years---One third month's wages for each completed year of service.

The gratuity will be paid in each case under clauses 1(a) and 1(b) to the employee, his heirs or executors, or nominee, as the case may be.

Provided that the maximum payment to be made shah not exceed the equivalent of 12 months' wages.

2. On voluntary retirement or resignation after 15 years service--On the same scale as in 1 (b) above.

Provided that the maximum payment to be made shall not exceed the equivalent of 12 months' wages.

3. On termination of service by the employer for any reason whatsoever eXcePt on the ground of misconduct--As in clauses 1(a) and 1(b) above.

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provided that the maximum payment to be made shall not exceed the equivalent of 12 months' wages."

[Clauses 4 to 10 of Annexure 'B' are the same I as in Annexure 'A' and need not be repeated.]

Whether against the A.T.M. the Tribunal was incompetent to make an award framing a .scheme for payment of gratuity may first be considered. Counsel for the A.T.M. urged that there was a settlement between the workmen and the management of the A.T.M. in consequence of which the Tribunal was incompetent to make an award. The facts on which reliance was placed are these: After ,the dispute was referred .to the Industrial Tribunal, there were negotiations between the management of the A.T.M. and workmen represented by the two Unions and an agreement was reached, the terms whereof were recorded in writing. Clauses 6 and 11 (4) of the agreement relate to the claim for gratuity:

"6. The workmen agree not to claim any further increase in wages, basic or dearness, or make any other demand involving financial burdens on the Company either on their initiative or as a result of any award, till such time as the Working of the mills results in profits.

11. The parties hereto agree to jointly withdraw in terms of this settlement, the following pending cases and proceedings before the Courts, Tribunals and Authorities and' more especially--

.....

(4) With regard to I.D. No. 70 of 1958 the workers agree not to claim any benefits that ,may be granted under the above reference by the Hon'ble Industrial Tribunal in case the award is. given in favour of the workmen, subject to clause 7 above."

(It is common ground that reference to el. 7 is erroneous: it should be .to cl. 6.)

The workmen and the management of the unit submitted an application before the Tribunal on December 28, 1959, admitting that there had been an "overall settlement" of all the pending disputes between the management of A.T.M. and its workmen represented by the two Unions, and requested that an interim award be made in terms of the agreement insofar as the dispute related to the A.T.M. No order was passed by the Tribunal on that application. On June 4, 1962, the Manager of the A.T.M. applied to the Tribunal that an interim award be pronounced in terms of the agreement. The workmen had apparently changed their attitude by that time and filed a written statement and requested that the ,prayer contained in paragraph 3 of the application "be rejected

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as impermissible in law". The Tribunal made an order on November 26, 1962, and observed:

".....the only interpretation that can be given to clause 11(4) of the settlement read with clause 7 is, that the workers of the Ajudhia Textile Mills had bound themselves not to claim any benefits that might be granted by the Tribunal in the award on the present reference, if it turns out to be in favour of the workmen unless and until the working of the Mills results in profit. The fact that the passing of an award on the demands was envisaged under the settlement goes to show that the demands were to be adjudicated upon in any case. The main case will now proceed in respect of all the mills and the effect of the settlement and of the application dated 28th December, 1959, and of the 5th July 1962 will be considered at the time of the final award."

But in making the final award the Tribunal did not specifically refer to the settlement. The terms of cl. 6 of the settlement clearly show that if it be found that the A.T.M. had acquired financial stability, it will be liable to pay gratuity to the workmen. We are unable to agree with the contention of counsel for the A.T.M. that it was intended by the parties that the adjudication proceedings against the A.T.M. should be dropped, and after the A.T.M. became financially stable a fresh claim should be made by the workmen on which a reference may be made by the Government for adjudication of the claim for gratuity against the A.T.M. The contention by the management of the A.T.M. that the Tribunal was incompetent to determine the gratuity payable to the workmen of the A.T.M. must therefore fail.

The other contention raised on behalf of the A.T.M. that its financial position was "unstable" need not detain us. The Tribunal has held that the A.T.M. was working at a loss since the year 1953-54 and the losses aggregated to Rs. 6.22 lakhs in the year 1958-59, but thereafter the financial position of the Unit improved. The trading account for the period ending March 31, 1960, showed profits amounting to

Rs. 3.10 lakhs. In 1960-61 there was a surplus of Rs. 11.18 lakhs out of which adjusting the depreciation, development rebate reserve and reserve for bad and doubtful debts, there was a balance of Rs. 7.10 lakhs. In 1961-62 the net profits of the Unit amounted to Rs. 7.48 lakhs and the A.T.M. distributed Rs. 52,500/- as dividend. In 1962-63 there was a gross profit of Rs. 4.18 lakhs and after adjusting depreciation and development rebate reserve there was a net deficit of Rs. 30,517/-. In 1963-64 there was a gross profit of Rs. 14.29 lakhs and after adjusting depreciation, reserve for doubtful debts, bonus to employees and development rebate reserve, there re-
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mained a net profit of Rs. 4.71 lakhs. The Tribunal observed that by 1961-62 all previous losses of the Unit were wiped out and that even during the year 1962-63 in which there was labour unrest the gross profits were substantial and taking into consideration the reserves built by the Company "the picture was not disheartening and from the great progress that had been made since 1959-60 there was every reason to think that the Mill had achieved stability and reasonable prosperity and that it had an assured future", and the Company was in a position to meet the burden of a modest gratuity scheme. We see no reason to disagree with the finding recorded by the Tribunal on this question.

On behalf of the D.C.M., S.B.M., and B.C.M. it was urged that normally gratuity schemes are framed on the region-cum-dustry principle, i.e., a uniform scheme applicable to all Units in an industry in a region is framed, and no ground for departure from that rule was made out. It was urged that this Court has accepted invariably the region-cum-industry principle in fixing the rates at which gratuity should be p.aid. In our judgment no such rule has been enunciated by this Court. In Bharatkhand Textile Mfg. Co. Ltd. v. Textile Labour Association, Ahmedabad(1), this Court in dealing with the question whether the Industrial Court had committed an error in dealing with the claim for gratuity on industry-wise basis negatived the contention of the employers that the unit-wise basis was the only basis which could be adopted in fixing the rates of gratuity. It was observed at p. 345:

> "Equality of competitive conditions is in a sense necessary from the point of view of the employers themselves; that in fact was the claim made by the Association which suggested that the gratuity scheme should be framed on industry-wise basis spread over the whole of the country. Similarly equality of benefits such as gratuity is likely to secure contentment and satisfaction of the employees and lead to industrial peace and harmony. if similar gratuity schemes are framed for all the units of the industry migration of employees from one unit to another is inevitably checked, and industrial disputes arising from unequal treatment in that behalf are minimaised. Thus, from the point of view of both employers and employees industry-wise approach is on the whole desirable."

It is clear that the Court rejected in that case the argument that rates of gratuity should be determined unit-wise: the Court did not rule that in all cases the region-cum-industry principle should be adopted in fixing the rates

of gratuity. That was made explicit in a later judgment of this Court: Burhanpur Tapti Mills Ltd. v.
(1) [1960] 3 S.C.R. 329.
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Burhanpur Tapti Mills Mazdoor Sangh(x). This Court observed at p. 456:

> ".....it has been laid down by this Court that there are two general methods of fixing the terms of a gratuity scheme. It may be fixed on the basis of industry-cum-region or on the basis of units. Both systems axe admissible but regard must be had to the surrounding circumstances to select the right basis. Emphasis must always be laid upon the financial position of the employer and his profit-making capacity whichever method is selected."

In Garment Cleaning Works v. Its Workmen(1) this Court observed at p. 713:

> ".....it is one thing to hold that the gratuity scheme can, in a proper case, be flamed on industry-cum-region basis, and another thing to say that industry-cum-region basis is the only basis on which gratuity scheme can be framed. In fact, in a large majority of cases gratuity schemes are drafted on the basis of the units and it has never been ,suggested or held that such schemes are not permissible."

The Tribunal in the award under appeal observed:

> "There are ..... certain peculiar features in the textile industry in this region which militate against an indnstry-cum-region approach. Apart from the fact that one of the four units, namely, the Ajudhia Textile 'Mills is a much weaker unit than the rest and has passed through a chequered career during its existence, it has to be borne in mind that two of the units namely D.C.M. and S.B.M. which axe sister concerns, already have some sort of a gratuity scheme providing for two important retiral benefits, namely, death and physical disablement on a scale which is independent of wage variations and is not unsubstantial at least for categories in the lower levels."

The Tribunal further observed:

> "if a common scheme is framed for the entire textile industry at Delhi i.e. for all the four units the quantum of benefits under that scheme will naturally have to be much lower in consideration of the financial condition of the Ajudhia Textile Mill, than if a unit-wise scheme is framed. Moreover in a common scheme of gratuity the quantum of benefits to be provided will have to be

(1) [1965] 1 L.L.J 453.
(2) [1962] 1 S.C.R. 711; [1961] I L.L.J. 513.
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> lower than the benefits already available to workmen in the D.C.M. and S.B.M. units for the most important contingencies for which gratuity benefits are meant, namely, death and retirement on account of physical or mental incapacity. Such a lowering of the

> quantum of benefits would not in my view be desirable as it would create legitimate discontent."

In our judgment, no serious objection may be raised against the reasons set out by the Tribunal in support of the view that unitwise approach should be adopted in the reference before it and not the region-cum-industry approach. No case is there/ore made out for interference with the award made determining the rates of gratuity unit-wise.

We also agree with the Tribunal that on the terms of the reference it was incompetent to fix the age of superannuation forworkmen. We are unable to hold that a gratuity scheme may be implemented only if the age of superannuation of the workmen is determined by the award. Support was sought to be derived by counsel for the employers in support of his plea from the observations made by this Court in Burhanpur Tapti Mills Ltd.'s case(D, where in examining the nature of gratuity, it was observed:

> "The voluntary retirement of an inefficient or old' or worn out employee on the assurance that he is to get a retiral benefit leads to the avoidance of industrial disputes, promotes contentment among those who look for promotions., draws better kind of employees and improves the tone and morale of the industry. It is beneficial all round. It compensates the employee who as he grows old knows that some compensation for the gradual destruction of his wage-earning capacity is being built up. By inducing voluntary retirement of old and worn out workmen it confers on the employer a benefit akin to the replacing of old and worn out machinery."

There is, in our judgment, nothing in these observations which justifies the view that a gratuity scheme cannot be effective unless it is accompanied by the fixation of the age of superannuation for the workmen in the industry.

There is another objection to the consideration of this claim made on behalf of the employers. By the express terms of reference the Tribunal is called upon to adjudicate on the question of fixation of gratuity: there is no .reference either expressly or by implication to the fixation of the age of superannuation and in the absence of any reference relating to the fixation of the age of (1) [1965] 1 LL.J. 453.

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superannuation, the Tribunal was not competent to fix the age of superannuation. A gratuity scheme may, in our judgment, be implemented even without fixing the age of superannuation. The gratuity scheme in operation in the D.C.M. and S.B.M. has been effectively in operation without any age of superannuation for the workmen in the two units. An enquiry into the question of fixing the age of superannuation did not arise out of the terms of reference. No such claim was made by workmen and' even in the written statement filed by the employers no direct reference was made to the fixation of the age of superannuation, nor was there any plea that before framing a gratuity scheme the Tribunal should provide for the age of superannuation. We agree with the Tribunal that fixation of the age of superannuation was not incidental to the ,framing of the gratuity scheme 'and it was neither necessary nor desirable that it should be fixed.

Counsel for the employers urged that the Tribunal committed a serious error in relating the computation of

gratuity payable to the workmen on retirement on the consolidated monthly wage and not on the basic wage. "Gratuity" in its etymological sense means a gift especially for services rendered or return for favours received. For some time in the early stages in the adjudication of industrial disputes, gratuity was treated as a gift made by the employer at his pleasure and the workmen had no right to claim it. But since then there has been a long line of precedents in which it has been ruled that a claim for gratuity is a legitimate claim which the workmen may make and which in appropriate cases may give rise to an industrial dispute.

In Garment Cleaning Works' case(1) it was observed that gratuity is not paid to the employees gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer. The same view was expressed in Bharatkhand Textile Mfg. Ltd.'s case(2) and Calcutta Insurance Ltd. v. Their Workmen(a). Gratuity paid to workmen is intended to help them after retirement on superannuation, death, retirement, physical incapacity, disability or otherwise. The object of providing a gratuity scheme is to provide a retiring benefit to workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer. It is one of the 'efficiency-devices' and is considered necessary for an 'orderly and humane elimination' from industry of superannuated or disabled employees who, but for such retiring benefits, would continue in employment even though they function inefficiently. It is not paid to an employee .gratuitously or merely as a matter of boon; it is paid to him for long and meritorious service rendered by him to the employer.

(1) [1962] 1 S.C.R. 711. (2) [1960] 3 S.C.R. 329.
(3) [1967] II L.L.J. 1.
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On the findings recorded by the Tribunal all the textile units in the Delhi region are able to meet the additional financial burden, resulting from the imposition of a gratuity scheme. The D.C.M. and S.B.M. have their own schemes which enable the workmen to obtain substantial benefit on determination of employment. The B.C.M. though a weaker unit is still fairly prosperous and is able to bear the burden: so also the A.T.M.

But the important question is whether these four units should be made liable to pay gratuity computed on the consolidated wage i.e., basic wage plus the dearness allowance. The Tribunal was apparently of the view that in determining the question the definition of the word "wages." in the industrial Disputes Act, 1947, would come to the aid of work-men. The expression "wages" as defined in s. 2(rr) of the Industrial Disputes Act 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 among other things, such allowances (including dearness allowance) as the workman is for the time being entitled to. But we are unable to hold that in determining the scope of an industrial reference, words used either in the claim advanced or in the order of reference made by the Government under s. 10 of the Industrial Disputes Act must of necessity have the meaning they have under the Industrial Disputes Act. Merely because the expression "wages" includes dearness allowance within the meaning of the Industrial Disputes Act, the Tribunal is not obliged to base a

gratuity scheme on consolidated wages.

The Tribunal has observed that the basic average wage of a workman in the textile industry in the Delhi region may be taken at Rs. 60/- per month, and the dearness allowance at Rs. 100/per month, and even if full one month's basic wage is adopted as the minimum quantum of benefits to be allowed in the case of wage group with service of 5 years and more the scale of benefit would be very much lower than the present scale in the two contingencies provided in the Employees Benefit Fund Trust Scheme in operation in the D.C.M. and S.B.M. And observed the Tribunal:

> "In view of the limitations of the terms of reference, the quantum cannot exceed 15 days' wages for every year of service from 5 to 10 years and 21 days' wages for every year of service from 10-15 years. Any schemes framed within the limitations of the terms of reference on the basis of basic wage alone will therefore mean a scale of benefits much lower than even the present scheme under the Employees Benefit Fund Trust. Such

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> a scheme cannot, therefore, be framed without causing grave injustice and acute discontent, because it will mean the deprivation of even the present scale of benefits in the case of a large body of workers. In order to maintain, so far as possible, the present level of benefits I have, therefore, no alternative but to frame for these two units a scheme based on basic wage plus dearness allowance."

A scheme of gratuity based on consolidated wages was also justified in the view of the Tribunal because it "was also necessary to compensate for the ever diminishing market value of the rupee".

The Tribunal did however observe that normally gratuity is based not on the consolidated wage but on basic wage. But since 13,000 workmen out of a total of 20,000 workmen in the region would stand to lose the benefits granted to them under a voluntary scheme introduced by the D.C.M. and S.B.M. a departure from the normal pattern should be made and gratuity should be based on the consolidated monthly wage. In our judgment, the conclusion of the Tribunal cannot be supported. The primary object of industrial adjudication is, it is said, to adjust the relations between the employers and employees or between employees inter se with the object of promoting industrial peace, and a scheme which deprives workmen of what has. been granted to them by the employer voluntarily would not secure industrial peace. But on that account the Tribunal was not justified in introducing a fundamental change in the concept of a benefit granted to the workmen in the textile industry all over the country by numerous schemes., The appropriate remedy is to introduce reservations protecting benefits already acquired and to frame a scheme consistent with the normal pattern prevailing in the industry.

We consider it fight to observe that in adjudication of industrial disputes settled legal principles have little play: the awards made by industrial tribunals are often the result of ad hoc determination of disputed questions, and each determination forms a precedent for determination of other disputes. An attempt to search for principle from the law built up on those precedents is a futile exercise. To the Courts accustomed to apply settled principles to facts

determined by the application of the judicial process, an essay into the unsurveyed expanses of the law of industrial relations with neither a compass nor a guide, but only the pillars of precedents is a disheartening experience. The Constitution has however invested this Court with power to sit in appeal over the awards of Industrial Tribunals which are, it is said, rounded on the somewhat hazy background of maintenance of industrial peace, which secures the prosperity of the industry and improvement of the conditions of workmen employed in the industry, and in
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the absence of principles precedents may have to be adopted as guides--some what reluctantly to secure some reasonable degree of uniformity of harmony in the process.

But the branch of law relating to industrial relations the temptation to be crusaders instead of adjudicators must be firmly resisted. It would not be out of place to remember the statement of the law made in a different context but nonetheless appropriate here---by Douglas, J., of the Supreme Court of the United States in United Steel Workers of America v. Enterprise Wheel and Car Corporation(1):

> ".....as arbitrator does not sit to dis pense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award. is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award."

We may at once state that we are not for a moment suggesting that the law of industrial relations developed in Our country has proceeded on lines parallel to the direction of the law in the United States.

One of the grounds which appealed to the Tribunal in relating to the rate of gratuity to the consolidated wage was the existence of a gratuity scheme in the D.C.M. & S.B.M. and-the assumption that the Tribunal in adjudicating a dispute is always, in exercise of its jurisdiction, limited when determining the rate of gratuity to the multiple number of days of service in the order of reference, and cannot depart therefrom. We are unable to hold that Industrial Tribunal is subject to any such restriction. Its power is to adjudicate the dispute. It cannot proceed to adjudicate disputes not referred: but when called upon to adjudicate whether a certain scheme "on the lines indicated" should he framed, the basic guidance cannot be deemed to impose a limit upon its jurisdiction.

As already stated, gratuity is not in its present day concept merely a gift made by the employer in Iris own discretion. The workmen have in course of time acquired a right to gratuity on determination of employment provided the employer can afford having regard to his financial condition, to pay it. There is undoubtedly no statutory direction for payment of gratuity as it is in respect of provident fund and retrenchment compensation. The conditions for the grant of gratuity are, as observed in Bharatkhand

(1) [1960] 363 U.S. 593.

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Textile Mfg. Co. Ltd.'s case(1), (i) financial capacity of the employer; (ii) his profit making capacity; (iii) the profits earned by him in the past; (iv) the extent of his reserves; (v) the chances of his replenishing them; and (vi) the claim for capital invested by him. But these are not

exhaustive and there may be other material considerations which may have to be borne in mind in determining the terms and conditions of the gratuity scheme. Existence of other retiring benefits such as provident fund and retrenchment compensation or other benefits do not destroy the claim to gratuity: its quantum may however have to be adjusted in the light of the other benefits.

We may repeat that in matters relating to the grant of gratuity and even generally in the settlement of disputes arising out of industrial relations, there are no fixed principles, on the application of which the problems arising before the Tribunal or the Courts may be determined and often precedents of cases determined adhoc are utilised to build up claims or to resist them. It would in the circumstances be futile to attempt to. reduce the grounds of the decisions given by the Industrial Tribunals, the Labour Appellate Tribunals and the High Courts to the dimensions of any recognized principle. We may briefly refer to a few of the precedents relating to the grant of gratuity. In May and Baker (India) Ltd. v. Their Workmen(2) the claim of the workmen to fix gratuity on the basis of gross salary was rejected by the Industrial Tribunal and the quantum was related to basic salary i.e., excluding dearness allowance. The view taken by the Tribunal was affirmed by this Court. In British India Corporation v. Its Workmen(3) the existing gratuity scheme directed payment of gratuity in terms of consolidated wages. The Tribunal however modified the scheme while retaining the basis of consolidated wages which was held to be justified and reasonable. This Court observed that prima facie gratuity is awarded not by reference to consolidated wages but on basic wages and the Tribunal had made a departure from that. But in the view of the Court no interference with the scheme framed by the Tribunal was called for. In British Paints (India) Ltd. v. Its Workmen(4) the Court followed the judgment in May and Baker (India) Ltd.(a) that it would be proper to follow the usual pattern of fixing the quantum of gratuity on basic wage excluding dearness allowance. But the same principle was not adhered to in all cases. For instance in Hindustan Antibiotics Ltd. v. Their Workmen(5), it was observed:

(1) [1960] 3 S.C.R. 329. (2) [1961] II L.L.J. 94 (S.C.).
(3) [1965] II L.L.J. 556 (S.C.). (4) [1966] I L.L.J. 407.
(5) [1967] I L.L.J. 114 (S.C.)==A.I.R. 1967 S.C. 948.
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> "The learned counsel for the Company then argued that there is a flagrant violation or departure from the accepted norms in fixing the wage structure and the dearness allowance and therefore, as an exceptional case, we should set aside the award of the Tribunal and direct it to. re-fix the wages."

In that case the Tribunal had awarded gratuity related to consolidated wages and without any contest the order of the Tribunal was confirmed. In Remington Rand of India v. The Workmen(1) it was contended on behalf of the employer that the Tribunal was not justified in awarding gratuity on the basis of consolidated wages and should have awarded it on the basic wages alone. In dealing with that plea this Court Observed that the Tribunal was on the facts of the case justified in proceeding in that way.

It is not easy to extract any principle.from these cases; as precedents they are conflicting. If the matter rested there, we could not interfere with the conclusion of

the Tribunal, but the Tribunal has failed to take into account the prevailing pattern in the textile industry all over the country. The textile industry is spread over the entire country, in pockets some large other small. There are large and concentrated pockets in certain regions and smaller pockets in other regions. Except in two or three of the smaller States, textile units are to be found all over the country. It is a country-wide industry and in that industry, except in one case to be presently noticed, gratuity has never been granted on the basis of consolidated wages. Out of 39 centres in which the textile industry is located there is no centre in which gratuity. payable to workmen in the textile industry pursuant to awards or settlements is based on consolidated wages. In the two principal centres viz., Bombay and Ahmedabad, schemes for payment .of gratuity to workmen in the textile industry the rates of gratuity are related to basic wages. The B.C.M. have tendered before the Tribunal a chart setting out the names of textile units in which the gratuity is paid to the workmen on basic wages. These are the Textile Units, Bhavnagar (Gujarat) Shahu Chhatrapati Mills, Kolhapur (Maharashtra); Jivajirao Cotton Mills, Gwalior (Madhya Pradesh); Madhya Pradesh Mill-owners Association, (Indore), Bombay, Ahmedabad (Gujarat); New Sherrock Spg. & Wvg. Co. Ltd. Nadiad (Gujarat); Raja Bahadur Motilal Mills, Poona (Maharashtra); Shree Gajanan Wvg. Mills, Sangli (Maharashtra); T.I.T. Bhiwani (Haryana); Jagatjeet Cotton Mills, Phagwada (Punjab); 36 Textile Mills in West Bengal; and Umed Mills (Rajasthan). It is true that the chart does not set out the gratuity schemes, if any, in all the 39 centres referred to in the Report of the First Wage Board, but the chart relates to a fairly representative segment of the industry. No evidence has been

(1) [1968] I L.L.J. 542.

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placed before the Court to prove that in determining gratuity payable under any other scheme in a textile unit the rate is related to consolidated wages. The two large centres in which the industry is concentrated are Bombay and Ahmedabad. In Rashtriya Mill Mazdoor Sangh, Bombay, v. Millowners Association Bombay(1), a scheme was framed by the Industrial Court, exercising power under the Bombay Industrial Relations Act 11 of 1947, in which the quantum of gratuity was related to the basic wages alone. In paragraph-27 at p. 583 the Tribunal rejected the argument advanced by counsel for the workmen that since benefits like provident fund, retrenchment compensation, State Insurance Scheme, are granted in terms of monthly wages, gratuity should also be related to consolidated wages. They observed that in a large majority of awards of the Labour Appellate Tribunals and Industrial. Tribunals gratuity had been awarded in terms of basic wages, and that,

> "The basic wages reflect the differentials between the workers more than the total wages, as dearness allowance to all operatives is paid at a flat rate varying with the cost of living index. The gratuity schemes for the supervisory and technical staff as well as for clerks are also in terms of basic wages."

They accordingly related gratuity with the average basic wage earned by the workman during the twelve months preceding death, disability, retirement, resignation or termination of service. The scheme in the Bombay region was

adopted in the dispute between the Textile Labour Association and the Ahmedabad Mill Owners Association. The award is reported in the Textile Labour Association, Ahmedabad v. Ahmedabad Millowners' Association(2). The question whether gratuity should be fixed on the basis ,of consolidated wages was apparently not mooted, but it was accepted on both the sides that gratuity should be related to basic wages. An appeal against that decision in the Ahmedabad Millowners' Association case(2) was brought before this Court in Bharatkhand Textile Manufacturing Co. Ltd.'s case(3), but no objection was raised to the award relating gratuity to basic wages. In the report of the Central Wage Board for the Cotton Textile Industry, 1959, in paragraph-110 gratuity was directed to be given on the basis. of wages plus the increases given under paragraph-106, but excluding the dearness allowance.

The only departure from the prevailing pattern to which our attention is invited was made by the Labour Appellate Tribunal in regard to the textile units in the Coimbatore Region: Rajalakshmi Mills Ltd. v. Their Workmen(4). There was apparently

(1) [1967] Industrial Court Reporter 561.
(2) [1958] I L.LJ. 349.
(3) [1960] 3 S.C.R. 329.
(4) [1957] II L.L.J. 426.

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no discussion on the question about the basis on which gratuity should be awarded. The Labour Appellate Tribunal observed:

> 2. "In all the appeals there is a contest by the mills on the subject of gratuity, and it is contended that the gratuity as awarded is too high. Both sides had much to say on the subject of the gratuity scheme as given by the adjudicator. During the course of the hearing we indicated to the parties the lines on which the gratuity scheme could be suitably altered to meet their respective points of view.
>
> 3. We accordingly give the following scheme in substitution of the scheme at Para 85 of the award:
>
> 'All persons with more than five years and less than ten years' continuous service to their credit, on termination of their service by the company, except in cases of dismissals for misconduct involving moral turpitude, shall be p.aid gratuity at the rate of ten days' average rate of pay inclusive of dearness allowance for each completed year of service.'
>
> ....."

But this award was modified later by the Industrial Tribunal in Coimbatore District Mill Workers' Union and Others v. Rajalakshmi Mills Co. Ltd.(1) The earlier award made in 1957 was sought to be reviewed before the Industrial Tribunal. The Tribunal observed that it would be the duty of the Tribunal to modify a gratuity scheme based upon some agreement or settlement if the terms of that agreement are found to be onerous and oppressive. The Tribunal stated that the original scheme was not applicable to all the units and taking into consideration the statutory provident fund scheme and "the fact that recently basic wages and dearness allowance have leaped up", there was no. justification for including the dearness allowance in any new scheme that

might be framed for the new Mills; and that it would be most undesirable to have two sets of gratuity schemes in the same region with varying rates. In the view of the Tribunal there should be a uniform scheme for all the Mills, old and new, and on that ground also the retention of the dearness allowance under the old scheme must be refused.

Counsel for the workmen relied upon an award made by the Industrial Tribunal in the Chemical Unit belonging to the D.C.M. which is published in D.C.M. Chemical Works v. Its Workmen(2). In that case gratuity was related to consolidated wages. The unit though belonging to the D.C.M. is entirely independent of the tex-

(1) [1964] I L.L.J. 638. (2) [1962] 1L.L.J. 388.

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tile unit. The Company was treating that unit as separate from the textile unit and distinct for the purpose of recruitment of lab.our, sales and conditions of service for the workmen employed therein. The Chemical Unit had separate muster-rolls for its employees and transfers from one unit to. the other, even where such transfers were possible, considering the utterly different kinds of businesses carried on in the different units, usually took place with the consent of the employee concerned. In upholding the gratuity scheme which was based on the consolidated wages, this Court observed:

> "As to the burden of the scheme, we do not think that, looking at it from a practical point of view and taking into account the fact that there are about 800 workmen in all in the concern, the burden per year would'be very high, considering that the number of retirements is between three to four per centum of the total strength."

The gratuity scheme was in a chemical unit, and not in a textile unit. The judgment of this Court merely affirmed the award of the Tribunal and sets out no reasons why gratuity should be related to consolidated wages. We do not regard the affirmance by this Court of the award of the Industrial Tribunal as an effective or persuasive precedent justifying a variation from the normal pattern of gratuity schemes in operation in the textile industry all over the country.

It is clear that in the gratuity schemes operative at present to which our attention has been invited, in force in the textile industry payment of gratuity is related not to consolidated wages but to basic wages. It is true that under the scheme which is in operation in the D.C.M. and S.B.M. payment which is related to the length of service may in some cases exceed the maximum awardable under a scheme of gratuity benefit related to basic wages. That cannot be a ground for making a vital departure from the prevailing pattern in the other textile units in the country. But it may be necessary to protect the interest of the members governed by the original scheme.

Determination of gratuity is not based on any definite rules. In each case it must depend upon the prosperity of the concern, needs of the workmen and the prevailing economic conditions, examined in the light of the auxiliary benefits which the workmen may get on determination of employment. If all over the country in the textile centres payment of gratuity is related to the basic wages and not on consolidated wages any innovation in the Delhi region is likely to give rise to serious industrial disputes in other centres all over the country. The award if confirmed would not ensure industrial peace: it is likely to foment serious

unrest in
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other centres. If maintenance of industrial peace is a governing principle of industrial adjudication, it would be wise to maintain a reasonable degree of uniformity in the diverse units all over the country and not to make a fundamental departure from the prevailing pattern. We are, therefore, of the view that the Tribunal's award granting gratuity on the basis of consolidated wage cannot be upheld. Tiffs modification will not, however, affect the existing benefits which are available under the schemes framed by the D.C.M. and S.B.M. insofar as those two units are. concerned.

Mr. Ramamurthi for the workmen also. contended that in the matter of relating gratuity to wages--consolidated or basic--the principle of region-cum-industry should be applied and an "overall view of similar and uniform conditions in the industry' in different centres" should not be adopted. It was also urged that the basic wage is very low and the class of wage to which gratuity was related played a very important part in the determination of gratuity. The basic wage is however low in all the centres and if it does not play an important part in other centres, we see no reason why it should play only in the Delhi region a decisive part so as to make a vital departure from the scheme in operation in the other centres in the country. We are strongly impressed by the circumstance that acceptance of the award of the Tribunal in the present case is likely to create conditions of great instability all over the country in the textile industry. In that view, we decline to uphold the order of the Tribunal fixing gratuity on the basis of consolidated wages inclusive of dearness allowance.

We may refer to the contentions advanced by counsel for the workmen in the two appeals filed by them. It was urged,, that the Tribunal was in error in denying to the workmen gratuity when employment is determined on the ground of misconduct. It was urged that it is now a rule settled by decisions of this Court that the employer is bound to pay gratuity notwithstanding termination of employment on the ground of misconduct. It may be noticed that in the Rashtriya Mill Mazdoor Sangh's case(1) and in the Ahmedabad Millowners' Association case(2) provision was expressly made denying gratuity to the workmen dismissed for misconduct. But in later cases a less rigid approach was adopted. In Garment Cleaning Works case(3) tiffs Court observed:

> "On principle, if gratuity is earned by an employee for long and meritorious service, it is difficult to understand why. the benefit thus earned by long and meritorious service should not be available to the employee even though at the end of such service he may have been found guilty of misconduct which entails his dismissal. Gratuity is not paid to the employee gratui-

(1) [1957] Industrial Court Reporter, 561.
(2) [1958] I L.L.J. 349.
(3) [1962] 1 S.C.R. 711.
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> tously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer, and when it is once earned, it is difficult to understand why it should necessarily be denied to him whatever may be the nature of misconduct of his dismissal."

In later judgments also the Courts upheld the view that the denial of the right to gratuity is not justified even if employment is determined for misconduct. In Motipur Zamindari (P) Ltd. v. Their Workmen (1), this Court opined that the workmen should not be wholly deprived o.f the benefit earned by long and meritorious service, even though at the end of such service he may be found guilty of misconduct entailing his dismissal, and therefore the condition in a gratuity scheme that no gratuity should be payable to a workman dismissed "for misconduct involving moral turpitude" should be held unjustified. The Court therefore modified the condition and directed that while paying gratuity to a workman who was dismissed for misconduct only such amount should be deducted .from the gratuity due to him in respect of which the employer may have suffered loss by the misconduct of the employee.

A similar view was expressed in Remington Rand of India Ltd.'s case (2). In Calcutta Insurance Company Ltd. 's case(3) however protest was raised against acceptance of this rule without qualification. Mitter, J., observed at p. 9 that it was difficult to concur in principle with the opinion expressed in the Garment Cleaning Works case(4). Mitter, J., observed:

> "We are inclined to think that it (gratuity) is paid to a workman to ensure good conduct throughout the period he serves the employer. 'Long and meritorious service must mean long and unbroken period of service meritorious to the end. As the period of service must be unbroken, so must the continuity of meritorious service be a condition for entitling the workman to gratuity. If a workman commits such misconduct as causes financial loss to his employer, the employer would, under the general law, have a right of action against the employee for the loss caused, and making a provision for withholding payment of .gratuity where such loss was caused to the employer does not seem to aid to the harmonious employment of labourers or workmen. Further, the misconduct may be such as to undermine the discipline in the workers---a case in which it would be extremely difficult to assess the financial loss to the employer."

(1) [1965] II L.L.J. 139. (2) [1968] I L.L.J. 542.
(3) [1967] II L.L.J. 1. (4) [1962] 1 S.C.R. 711.

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"Misconduct" spreads over a wide and hazy spectrum of industrial activity: the most seriously subversive conduct rendering an employee wholly unfit for employment to mere technical default are covered thereby. The parliament enacted the Industrial Employment (Standing Orders) Act, 1946, which by s. 15 has authorised the appropriate Government to make rules to carry out the purposes of the Act and in respect of additional matters to be included in the Schedule. The Central Government has framed certain model standing rules by notification dated December 18, 1946, called 'The Industrial Employment (Standing Orders) Central Rules, 1946'. In Sch. I-Model Standing Orders--cl. 14 provides:

(1) .....

(2) A workman may be suspended for a period not exceeding four days at a time, or dismissed without notice or any compensation in lieu of notice, if he is found to be guilty

of misconduct.
(3) The following acts and omissions shall be treated as misconduct :--
(a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior,
(b) theft, fraud or dishonesty in connection with the employer's business or property,
(c) wilful damage to or loss of employer's goods or property,
(d) taking or giving bribes. or any illegal gratification,
(e) habitual absence without leave or absence without leave for more than 10 days,
(f) habitual late attendance,
(g) habitual breach of any law applicable to the establishment,
(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline,
(i) habitual negligence or neglect of work,
(j) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month,
(k) striking work or inciting. others to strike work in contravention of the provisions of any law, or rule having the force of law." '
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A bare perusal of the Schedule shows that the expression "misconduct" covers a large area of human conduct. On the one hand are the habitual late attendance, habitual negligence and neglect of work: on the other hand are riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline, wilful insubordination or disobedience. Misconduct falling under several of these latter heads of misconduct may involve no direct loss or damage to the employer, but would render the functioning of the establishment impossible or extremely hazardous. For instance, assault on the Manager of an establishment may not directly involve the employer in any loss or damage which could be equated in terms of money, but it would render the working of the establishment impossible. One may also envisage several acts of misconduct not directly involving the establishment in any loss, but which are destructive of discipline and cannot be tolerated. In none of the cases cited any detailed examination of what type of misconduct would of would not involve to the employer loss capable of being compensated in terms of money was made: it was broadly stated in the eases which have come before this Court that notwithstanding dismissal for misconduct a workman will be entitled to gratuity after deducting the loss occasioned to the employer. If the cases cited do not enunciate any broad principle we think that in the application of those cases as precedents a distinction should be made between technical misconduct which leaves no trail of indiscipline, misconduct resulting in damage to the employer's property, which may be compensated by forfeiture of gratuity or part thereof, and serious misconduct which though not directly causing damage such as acts of violence against the management or other employees or riotous or disorderly behaviour, in or near the place of employment is conducive to grave indiscipline. The first should involve no forfeiture: the second may involve forfeiture of an amount equal to the loss directly suffered by the employer in consequence of the misconduct and the third may entail forfeiture of gratuity due to' the workmen. The precedents

of this Court e.g. Wenger & Co.
v. Its Workmen(1), Remington Rand of India Ltd. case(2) and Motipur Zamindari (P) Ltd.'s case(a) do not compel us to hold that no misconduct however grave may be visited with forfeiture of gratuity. In our judgment, the rule set out by this Court in Wenger & Co.'s case(1) and Motipur Zamindari (P) Ltd.'s case(3) applies only to those cases where there has been by actions wilful or negligent any loss occasioned to the property of the employer and the misconduct does not involve acts of violence against the management or other employees, or riotous or dis-
(1) [1963] II L.L.J. 403. (2) [1968] I L.L.J. 542 (S.C.).
(3) [1965] II L.L.J. 139 (S.C.).
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orderly behaviour in or near the place of employment. In these exceptional cases--the third class of cases the employer may exercise the right to forfeit gratuity: to hold otherwise would be to put a premium upon conduct destructive of maintenance of discipline.

It was urged on behalf of the workmen that the minimum period of 15 years fixed for voluntary retirement is too long and it should be reduced to 10 years. In Hume Pipe Co. Ltd. v. Their Workmen(1) and Hydra (Engineers) Private Ltd. v. The Workmen(2) the minimum period for qualifying for gratuity on voluntary retirement was fixed at 15 years. In other cases a shorter period of 10 years was adopted: Garment Cleaning Works(a); British Paints (India) Ltd.(4); Calcutta Insurance Co. Ltd.(5), and Wengel & Company(x).

Counsel for the employers have accepted that qualifying length of service for voluntary retirement should be reduced to 10 years. Counsel for the employers have also accepted that having regard to all the circumstances, notwithstanding the direction given by the Tribunal and the schemes prevailing in the other parts of the country in the textile industry, the maximum gratuity should not exceed 20 months' basic wages and not 15 months' as directed by the Tribunal. Further counsel for the D.C.M. and S.B.M. have agreed that in case of termination of employment on voluntary retirement one full months basic wages for each completed year of service not exceeding 20 months' wages should be granted to workmen. Counsel for the B.C.M. has agreed that gratuity at the rate of 21 days' wages for each completed year of service in case of voluntary retirement or resignation after 10 years' service may be awarded as gratuity to the workmen. Counsel for the A.T.M. has shown no disinclination to fall in line with this suggestion. Counsel for the A.T.M. has also not objected to appropriate adjustments in view of the concessions made by the management of the D.C.M., S.B.M. and B.C.M.

It was urged by counsel for the workmen that in providing that gratuity shall be paid to Badli workmen for only those years in which a workman has worked for 240 days, the Tribunal has committed an error. It was urged that a Badli workman has to register himself with the management of the textile unit and is required every day to attend the factory premises for ascertaining whether work would be provided to him, and since a Badli workman has to remain available throughout the year when the factory is open, a condition requiring that the Badli workman has worked for not less than 240 days to qualify for gratuity is unjust. We
(1) [1959] II L.L.J. 830.
(2) C.A. No. 1934 of 1967 decided on April 30, 1968.
(3) [1962] 1 S.C.R. 711.
(4) [1966] I L.L.J. 407 (S.C.)

(5) [1967] II L.L.J. 1 (S.C.).
(6) [1963] II L.L.J. 403 (S.C.)
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are unable to agree with that contention. If gratuity is to be paid for service rendered, it is. difficult to appreciate the grounds on which it can be said that because for maintaining his name on the record of the Badli workmen, a workman is required to attend the Mills he may be deemed to have rendered service and would on that account be entitled also to claim gratuity. The direction is unexceptionable and the contention must be rejected. -

It was also urged by Mr. Ramamurthi that the expression "average of the basic wage" in the definition of "wages" in cl. 4 of the Schemes is likely to create complications in the implementation of the Schemes. He .urged that if the wages earned by a workman during a month are divided by the total number of working days, the expression "wages" will have an artificial meaning and especially where the workman is old or disabled or incapacitated from rendering service, gratuity payable to him will be substantially reduced. We do not think that there is any cause for such apprehension. The expression "average of the basic wage" can only mean the wage earned by a workman during a month divided by the number of days for which he has worked and multiplied by 26 in order to arrive at the monthly wage for the computation of gratuity payable. Counsel for the employers agree to this interpretation.

It was then urged that whereas the reference to. the Industrial Tribunal was made by the Delhi Administration sometime in March 1958, the award is .given effect to from January 1, 1964, and-for a period of nearly six years the workmen have been deprived of gratuity, when the delay in the disposal of the proceedings was no.t due to. any fault or delaying tactics on the part of the workmen. The reference was made in the first week of March, 1958. The Textile Mazdoor Union then applied to be impleaded on September 15, 1958, the D.C.M. and S.B.M. moved the High Court of Punjab at Delhi and obtained an order for stay of proceedings in writ petition filed against the order of the Tribunal impleading the Textile Mazdoor Union. That writ petition was dismissed in February 1961 and the proceedings were resumed on December 12, 1962. Thereafter preliminary issues were decided and on December 3, 1963, ,an interim award relating to other disputes was made. It must, however, be noticed that there were four claims and the claim relating to gratuity was taken in hand by the Tribunal after disposal of the other claims. Neither party was dilatory in the prosecution of any claim before the Tribunal. It has also to be noticed that in the D.C.M. and S.B.M. there was in fact a gratuity scheme already in operation. The liability of the A.T.M. to pay gratuity arises after that unit acquired sufficient financial stability and it is not suggested that the unit had acquired financial stability before January 1, 1964. The is.sue remains a live issue only in respect of the B.C.M. It is true that the gratuity
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scheme of the D.C.M., and S.B.M. was related only to the length of service and did not take into account the varying rates of wages received by the workmen. But the question if at all would, be one of making minor adjustments in the liability of the two units to pay gratuity in the event of gratuity being payable under this award at a higher rate than the gratuity awardable under the scheme already in

operation in the two units. If in respect of the A.T.M. which had no scheme gratuity for all practical purposes becomes operative from January 1, 1964, we do not see any reason why in respect of the B.C.M. any different rule should be provided for. Again, the Tribunal has fixed January 1, 1964, as the date for the commencement of the schemes. Giving the schemes effect before January 1, 1964, may rake up cases. in which the workmen have left the establishments many years ago. It would not be conducive to industrial peace to allow such questions to be raised after this long delay. The question is not capable of solution on the application of any principle and must be decided on the consideration of expediency. We do not think that any ground is made out for altering the award of the Industrial Tribunal in this behalf.

It was then urged that in any event the workmen of the D.C.M. and S.B.M. should not be deprived of the right to gratuity under the scheme of the two u,nits, if gratuity at a higher rate is payable to them under the voluntary scheme. This contention must be accepted. We direct that in respect of all workmen of the D.C.M. and S.B.M. who were employed before January 1, 1964, and continued to remain employed till that date, gratuity at the higher of the two rates applicable to each workman when he becomes entitled to gratuity either computed under the Employees Benefit Fund Trust scheme of the D.C.M. and S.B.M. or under the terms of this award shall be paid. Workmen employed after January 1, 1964, will be entitled to the benefit of this award alone.

Industrial disputes have given rise to considerable strife holding up development of industry and the economic welfare of the nation. Awards have been made by the Tribunals often on considerations adhoc and based on no principle and Courts have upheld or modified those awards without enunciation of any definite or generally accepted principle. In the present case we have been largely guided b37 the consideration of securing a reasonable degree of uniformity in the fixation of gratuity in the textile industry, for, in our view, a departure made from the prevailing pattern in one region is likely to give rise to claims all over the country for modification of the gratuity schemes in operation, and have been accepted as fixing the basis. of gratuity schemes. If having regard to the deteriorating value of the rupee, it is thought necessary that more generous benefits should be available to the
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workmen by way of gratuity, the remedy lies not before the adjudicators or the Courts, but before the legislative branch of the State. In respect of the bonus, provident fund, retrenchment compensation, State Insurance Schemes as well as medical benefits, legislation has been introduced bringing a reasonable degree of certainty in the laws governing the various benefits available to the workmen and we are of the view that even in respect of gratuity a reasonably uniform scheme may be evolved by the Legislatures which could prevent resort to the adjudicators in respect of this complicated matter of dispute between the employers and the employees. It may no.t be difficult to evolve a scheme which would meet the legitimate claims. of both the employers and the employees and which might, while eliminating cause for friction,' simultaneously conduce to greater certainty in the administration of the law governing industrial disputes, and secure benefits to the employers as well as the employees and conduce to the prosperity of the industry as well as of the workmen.

We propose to summarise the effect of our judgment:

(1) A unit-wise approach in framing the gratuity scheme for the four units was appropriate, and on the terms of the reference the plea of the employers to fix the age of superannuation was beyond the scope of reference. The financial condition of the D.C.M., S.B.M. and B.C.M. justifies imposition of gratuity schemes as from January 1, 1964. Even the A.T.M. which is the weakest of the four units is financially stable from the date on which the award becomes operative;

(2) The settlement between the workmen and the A.T.M. did not operate to bar the jurisdiction of the Tribunal to make the scheme of gratuity payable to the workmen of the A.T.M.;

(3) That the Tribunal was in error in relating gratuity awardable to the workmen to the consolidated wage;

(4) That the minimum period for . qualifying for voluntary retirement should be reduced to 10 years and one months basic wage in the case of D.C.M. and S.B.M. and 21 days' basic wage in the case of B.C.M. and A.T.M. for each completed year of service should be paid but not exceeding 20 months wages in the aggregate. (This direction is made with the consent of the Advocates of the employers);

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(5) That workmen dismissed or discharged from service for misconduct will not be entitled to gratuity if guilty of conduct involving acts of violence against the management or other employees, or riotous or disorderly behaviour in or near the place of employment;

(6) No modification need be made with regard to Badli workmen;

(7) The award needs no modification with regard to the date of operation of the award; and

(8) The workmen of the D.C.M. and S.B.M. who commenced service and continued to serve till January 1, 1964, and thereafter will be entitled to elect at the time when gratuity becomes due to claim gratuity either on the scheme in force under the Employees Benefit Fund Trust of the employers or under this award.

We have made some incidental changes to streamline the scheme. On the view we have taken of the schemes, Annexure 'A' relating to the D.C.M. and S.B..M. of the award will be modified in the following respects:

In clause 1 (a) instead of "12 days' wages", the expression "20 days' wages" will be substituted;

In clause 1 (b) for the expression "15 days' wages", the expression "1 month's wages" will be substituted;

In proviso (ii) to clause 1 for the expression "15 months' wages", the expression

"20 months' wages" will be substituted;

In clause 2 for the expression."15 days' wages", the expression "1 months wages will be substituted; and for the expression ' 15 years service , 10 years service will be substituted;

In the proviso to clause 2 for the expression "15 months' wages", the expression "20 months' wages" will be substituted;

In clause 3 in the proviso for the expression "15 months' wages", the expression "20 months' wages" will be substituted;

Clause 3 will be followed by an Explanation:

"Explanation.--The expression "misconduct" means acts involving violence against the management or other employees, or riotous or disorderly behaviour in or near the place of employment.

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Where the workman is guilty of conduct which involves the management in financial loss, the loss occasioned may be deducted from the gratuity payable."

In clause 4 the words "plus the dearness allowance" will be omitted.

The remaining clauses will stand unaffected except that for the words "within six months from the date of publication of this Award"' the words "within six months from the date of this judgment" will be substituted.

Annexure 'B' relating to the B.C.M. and A.T.M. will be modified in the following respects:

In clause 1 (a) for the expression "one fourth month's wages", the expression "15 days' wages" will be substituted;

In clause 1 (b) for the expression "one third month's wages", the expression "21 days' wages" will be substituted;

In the proviso for the expression "12 months' wages", the expression "20 months' wages" will be substituted;

In clause 2 for the words "15 years' service", the expression "10 years' service" will be substituted;

In clause 3 in the proviso for the expression "12 months' wages", the expression "20 months' wages" will be substituted and it will be followed by the Explanation of "misconduct" as in Annexure 'A'.

In clause 4 the words "plus the dearness allowance" will be omitted.

There will be no order as to costs in these appeals.

V.P.S. Award modified accordingly.

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