part of the working or operational expenses of the company. It was an expenditure made for the purpose of acquiring an appreciated capital asset which would no doubt by reason of the undertaking given by the lessor make the capital asset more profit yielding. The period of 5 years over which the payments were spread did not make any difference to the nature of the acquisition. It was none the less an acquisition of an advantage of an enduring nature which enured for the benefit of the whole of the business for the full period of the lease unless terminated by the lessor by notice as prescribed in the last part of the clause. This again was the acquisition of an asset or advantage of an enduring nature for the whole of the business and was of the nature of capital expenditure and thus was not an allowable deduction under section 10(2) (xv) of the Act.

We are therefore of the opinion that the conclusion reached by the Income-tax authorities as well as the High Court in regard to the nature of the payments was correct and the sums of Rs. 40,000 paid by the company to the lessors during the accounting years 1944-45 and 1945-46 were not allowable deductions under section 10(2) (xv) of the Act.

The appeal therefore fails and must be dismissed with costs.

Appeal dismissed.

MUIR MILLS CO., LTD.

v.

SUTI MILLS MAZDOOR UNION, KANPUR.

[MEHR CHAND MAHAJAN C.J., S. R. DAS, BHAGWATI and VENKATARAMA AYYAR JJ.]

Bonus —Meaning of—Necessary conditions for the demand thereof—Industrial claim—Principles for the grant of it—Social Justice—Meaning of—Industrial Tribunals—Whether Tribunals within the meaning of Art. 136 of the Constitution.

The term bonus is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained.

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There are two conditions, which have to be satisfied before a demand for bonus can be justified and they are, (1) when wages fall short of the living standard and (2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. The demand for bonus becomes an industrial claim when either or both these conditions are satisfied.

The formula for the grant of bonus is as follows :—

As both labour and capital contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges. The first charges on gross profits are (1) provision for depreciation. (2) reserves for rehabilitation, (3) a return at 6 per cent. on the paid up capital and (4) a return on the working capital at a lesser rate than the return on paid up capital. The surplus that remained after meeting the aforesaid deductions would be available for distribution as bonus.

The claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage. If it were so, it would necessarily rank for precedence before dividends. The dividends can only be paid out of profits and unless and until profits are made no occasion or question can arise for distribution of any sum as bonus amongst the employees.

Social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations.

The concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundation.

Industrial Tribunals are Tribunals within the meaning of Art. 136 and Art. 136 has vested in the Supreme Court exceptional and overriding power to interfere where it reaches the conclusion that a person has been dealt with arbitrarily or that a Court or Tribunal within the territory of India has not given a fair deal to a litigant.

In re Eddystone Marine Insurance Co. (L.R. [1894] W.N. 30), *Sutton* v. *Attorney-General* ([1923] 39 T.L.R. 294), *National Association of Local Government Officers* v. *Bolton Corporation* (L.R. 1943 A.C. 166), *Kenicott* v. *Supervisor of Wayne County* ([1873] 83 U.S. 452: 21 L. Ed. 319), *Great Western Garment Co. Ltd.* v. *Minister of National Revenue* ([1948] 1 D.L.R. 225), *Millowners' Association, Bombay* v. *Rashtreeya Mills Mazdoor Sangh, Bombay* ([1950] 2 L.L.J. 1247), *Nizam Sugar Factory Ltd., Hyderabad* v. *Their Workmen* ([1952] 1 L.L.J. 386), *Textile Mills, Madhya Pradesh* v. *Their Workmen* ([1952] 2 L.L.J. 625), *Famous Cine Laboratory* v. *Their Workmen* ([1953] 1 L.L.J. 466) and *Bharat Bank Ltd., Delhi*

v. *Employees of the Bharat Bank Ltd., Delhi,* ([1950] S.C.R. 459), referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 135 of 1951.

Appeal by Special Leave granted by the Supreme Court of India by its Order dated the 21st of May, 1951, from the Judgment and Order dated the 19th February, 1951, of the Labour Appellate Tribunal of India, Allahabad in Appeal No. 136 of 1950.

C. K. Daphtary, Solicitor-General of India (*J. B. Dadachanji, Rajinder Narain* and *Devinder Swarup,* with him) for the appellant.

S. C. Isaacs (*C. P. Lal,* with him) for the respondent.

M. C. Setalvad, Attorney-General for India, (*Rajinder Narain* and *Devinder Swarup,* with him) for the Intervener (All India Organisation of Industrial Employers).

S. C. Isaacs (*Mohan Lal Saxena* and *C. P. Lal,* with him) for the Intervener (State of U.P.).

1954. November 19. The Judgment of the Court was delivered by

BHAGWATI J.—This appeal with special leave is directed against the judgment and order of the Labour Appellate Tribunal of India in a dispute regarding the workers' claim for bonus.

During the year 1948 the appellant made a profit of Rs. 11,97,648-11-9. It paid 24¾ per cent. dividend on ordinary shares, being the maximum that could be paid under the Public Companies (Limitation of Dividend) Ordinance of 1948 and also paid to the workers their full share of bonus at annas 4 in a rupee of their basic earnings. During the Year 1949 the selling rates for cloth and yarn were controlled by the Government and were approximately 4 per cent. below those obtained in 1948. The basic wages were increased from the 1st December, 1948, by order of the Government of Uttar Pradesh and the total wages paid were therefore higher than those in the previous year. There

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was moreover indiscipline amongst the workers and production suffered. There was a strike in the month of October and the mills were closed for nearly a month. Further the management were unable to secure cotton which resulted in the curtailment of the working hours. As a result of all these circumstances the appellant suffered a trading loss of Rs. 5,02, 563-1-10. A sum of Rs. 2,50,000 being the excess reserve for taxation was written back and a sum of Rs. 10,01,871-13-5 being the amount of reserve transferred from the investment account was also brought in. An aggregate sum of Rs. 12,51,871-13-5 was thus brought into the balance-sheet by these two transfers. The trading loss was deducted from this amount leaving a credit balance of Rs. 7,49,308-11-7 and that amount was shown as the profit for the year 1949 in the balance-sheet for that year. The balance which had been brought forward from the previous year was added thereto and a dividend of 24¾ per cent. was paid to the ordinary shareholders. The appellant also paid *ex gratia* to the workmen bonus at the rate of annas 2 per rupee of their basic earnings making it clear by their notification dated the 7th April, 1950, that the directors had sanctioned the payment at that rate in spite of the appellant having suffered a trading loss for the year, that it was being paid entirely at the discretion of the appellant and was not related to or connected with any contract of employment of any worker.

On the 4th May, 1950, the Secretary of the respondent Union petitioned to the Provincial Conciliation Officer (Textile) that there was more production in 1949 than in 1948, that there was no reason to hold that the profit in 1949 was less than in the previous year and that the rate of bonus was wrongly reduced and asked that bonus for 1949 should also be paid at the rate of annas 4 per rupee. The industrial dispute which thus arose was referred for enquiry and recording of an award to the Regional Conciliation Board (Textile), Kanpur. The Conciliation Board by a majority decision repelled the contention of the appellant and awarded the payment of bonus at annas 4 per rupee. On an appeal taken by the appellant to the

Industrial Court (Textiles and Hosiery), Kanpur, the Industrial Court accepted the contention of the appellant, allowed the appeal and set aside the award. The respondent thereupon appealed to the Labour Appellate Tribunal which substantially agreed with the Industrial Court on questions of fact as well as the general position in law but imported considerations of social justice and treating this as a special case "where social justice would demand that labour should have bonus for the year where for that very year capital had had not only a reasonable return but much in excess of that", allowed the appeal and directed the appellant to pay to the workmen bonus at the rate of annas 4 per rupee within six weeks of their decision. The appellant filed this appeal against that decision after obtaining special leave from this Court.

Both the Industrial Court as well as the Labour Appellate Tribunal found as a fact that there was a trading loss of Rs. 5,02,563-1-10 during the year 1949 and also that the dividend of 24¾ per cent. to the ordinary shareholders was distributed after transferring the aggregate sum of Rs. 12,51,871-13-5 from the reserves. The question which therefore arises for our consideration is mainly whether the workers are entitled to the payment of a bonus in spite of the employer having worked at a loss during the year and incidentally whether the workers have any right, title or interest in the reserves and the undistributed profits of the previous years.

The primary meaning of the word "bonus" according to the definition given in the New English Dictionary is :—"A boon or gift over and above what is nominally due as remuneration to the receiver and which is therefore something wholly to the good". This definition was adopted by Stirling J. in *In re Eddystone Marine Insurance Co.*(1) Webster's International Dictionary defines bonus as "something given in addition to what is ordinarily received by or strictly due to the recipient". The Oxford Concise Dictionary defines it as "something to the good, into the bargain (and as an example) gratuity to workmen beyond their wages".

(1) L.R. (1894) W. N. 30.

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Corpus Juris Secundum, Volume XI, at page 515 ascribes the following meanings to the word bonus :—

"An allowance in addition to what is usual current or stipulated ; a sum given or paid beyond what is legally required to be paid to the recipient; something given in addition to what is ordinarily received by or strictly due to the recipient"

and adds :

"It has been said to carry the idea of something uncertain and indefinite, something which may or may not be paid depending on varying circumstances and under particular conditions has been said to imply a benefit accruing to him who offers it and an inducement to the offeree."

This imports the conception of a boon, gift or a gratuity otherwise described as an *ex gratia* payment.

The word 'bonus' has however acquired a secondary meaning in the sphere of industrial relations. It is classified amongst the methods of wage payment. It has been used especially in the United States of America to designate an award in addition to the contractual wage. It is usually intended as a stimulus to extra effort but sometimes represents the desire of the employer to share with his workers the fruits of their common enterprise. (Vide Encyclopaedia Britannica, Volume III, page 856).

The Pocket Part of the Corpus Juris Secundum, Volume XI, under the heading "As Compensation for Services" quotes the following passage from *Attorney-General* v. *City of Woburn*(1) :—

"The word 'bonus' is commonly used to denote an increase in salary or wages in contracts of employment. The offer of a bonus is the means frequently adopted to secure continuous service from an employee to enhance his efficiency and to augment his loyalty to his employer and the employee's acceptance of the offer by performing the things called for by the offer binds employer to pay the bonus so called."

It also gives another meaning of the word 'bonus', *viz.*, "increased compensation for services already

(1) 317 Mass. 465.

rendered gratuitously or for a prescribed compensation where there is neither express or implied understanding that additional compensation may be granted."

This imports the conception that even though the payment be not strictly due to the recipient nor legally enforceable by him, a claim to the same may be laid by the employee under certain conditions and if such claim is entertained either by an agreement with the employer or by adjudication before a properly constituted Tribunal as on an industrial dispute arising, the same would ripen into a legally enforceable claim.

This position was recognised in *Sutton* v. *Attorney-General*(1), where the Earl of Birkenhead observed :—

"The term 'bonus' may of course be properly used to describe payments made of grace and not as of right. But it nevertheless may also include, as here, payments made because legally due but which the parties contemplate will not continue indefinitely",

and in *National Association of Local Government Officers* v. *Bolton Corporation* (2) :—

"This payment, if made, cannot properly in my opinion be regarded as a mere gratuity. Though there is an element of bounty in it the bounty, if granted, is given for good reasons of national policy.....I do not see why this does not fall within the definition of trade dispute just as much as a dispute as to the rate of wages or salary."

To a similar effect are the observations in *Kenicott* v. *Supervisors of Wayne County* (3) :—

"But second, the meaning of the word 'bonus' is not given to it by the objection. It is thus defined by Webster. 'A premium given for a loan or a charter or other privilege granted to a company; as, the bank paid a bonus for its charter; a sum paid in addition to a stated compensation'. It is not a gift or gratuity, but a sum paid for services, or upon a consideration in addition to or in excess of that which would ordinarily be given",

(1) (1923) 39 T.L.R. 294, 297.
(2) [1943] A.C. 166, 187.
(3) (1873) 83 U.S. 452; 21 L. Ed. 319.

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and also in *Great Western Garment Co. Ltd.* v. *Minister of National Revenue* (1) :—

"A bonus may be a mere gift or gratuity as a gesture of goodwill and not enforceable, or it may be something which an employee is entitled to on the happening of a condition precedent and is enforceable when the condition is fulfilled. But in both cases it is something in addition to or in excess of that which is ordinarily received."

The Textile Labour Inquiry Committee defined 'bonus' as follows :—

"The term bonus is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained."

There are however two conditions which have to be satisfied before a demand for bonus can be justified and they are, (1) when wages fall short of the living standard and (2) the industry makes huge profits part of which are due to the contribution which the workmen make in increasing production. The demand for bonus becomes an industrial claim when either or both these conditions are satisfied.

The principles for the grant of bonus were discussed and a formula was evolved by the Full Bench of the Labour Appellate Tribunal in *Millowners' Association, Bombay* v. *Rashtreeya Mill Mazdoor Sangh, Bombay* (2) : "As both labour and capital contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges" and the following were prescribed as the first charges on gross profits, *viz.*,

(1) Provision for depreciation,

(2) Reserves for rehabilitation,

(3) A return at 6 per cent. on the paid up capital.

(4) A return on the working capital at a lesser rate than the return on paid up capital.

The surplus that remained after meeting the aforesaid deductions would be available for distribution as bonus.

(1) (1948) D.L.R. 225, 233. (2) (1950) 2 L. L. J. 247.

It is therefore clear that the claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage. Because if it were so it would necessarily rank for precedence before dividends. The dividends can only be paid out of profits and unless and until profits are made no occasion or question can also arise for distribution of any sum as bonus amongst the employees. If the industrial concern has resulted in a trading loss, there would be no profits of the particular year available for distribution of dividends, much less could the employees claim the distribution of bonus during that year. This has been clearly recognised even in the various decisions of the Labour Appellate Tribunal, *e.g., Nizam Sugar Factory Ltd., Hyderabad* v. *Their Workmen*(1), *Textile Mills, Madhya Pradesh* v. *Their Workmen*(2) and *Famous Cine Laboratory* v. *Their Workmen*(3). This was also the basis of the demand of the respondent in the case before us; its case being that the appellant had reaped substantial profits during the year 1949. This case was negatived by the Industrial Court as well as the Labour Appellate Tribunal, both of whom held that the working of the appellant during the year 1949 had resulted in a loss. Whereas the Industrial Court declined to grant the respondent any relief because the working of the appellant during the year had resulted in a loss, the Labour Appellate Tribunal made a special case for the respondent in spite of its concurrence with that finding of the Industrial Court. It is significant to observe that this principle was accepted by the Labour Appellate Tribunal itself:

"As at present advised a claim for bonus which had been rested on profits earned should ordinarily be determined on the basis of the profits earned in the year under claim and that the scale of bonus should be determined on the quantum of profits earned in the

(1) (1952) 1 L.L.J. 386.
(2) (1952) 2 L.L.J. 625.
(3) (1953) 1 L.L.J. 466.

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year. So, it would follow that if there is trading loss in the year under claim, bonus should not ordinarily be awarded."

It however observed :

"But, in our opinion, that should not be the universal rule. Considerations of social justice cannot be disregarded altogether, in relations between capital and labour. There may be special cases, and we consider the case before us to be one, where social justice would demand that labour should have bonus for the year where for that very year capital had had not only a reasonable return but much in excess of that."

The Labour Appellate Tribunal did not accept the contention of the respondent that bonus should be linked to dividends nor did it rest its decision on the respondent having a right, title and interest in the reserves and the undistributed profits of the appellant. Linking of bonus to dividend would obviously create difficulties. Because if that theory was accepted a company would not declare any dividends but accumulate the profits, build up reserves and distribute those profits in the shape of bonus shares or reduce the capital in which event the workers would not be entitled to claim anything as and by way of bonus. The workers not being members of the company would also not have any right, title and interest in the reserves or the undistributed profits which would form part of the assets of the company. Even on a winding up of a company the property of the company would be applied in satisfaction of its liabilities *pari passu* and, unless the articles of association of the company otherwise provided, in distribution amongst the members according to their rights and interest in the company. The employees would in no event be entitled to any share or interest in the assets and the capital of the company. A transfer of moneys from these reserves or the undistributed profits would therefore not enure for the benefit of the workers. The shareholders only would be entitled to such benefit and the mere fact that dividends were declared and paid to the shareholders out of such reserves and undistributed profits would

not entitle the workers to demand bonus when in fact the working of the industrial concern during the particular year had showed a loss.

It has also got to be remembered that the labour force employed in an industrial concern is a fluctuating body and it cannot be predicated of the labour force in a particular year that it represents the past and the present workers, so that it can claim to demand bonus out of the reserves or undistributed profits of the previous years. On the accounts of each year being made up and the profits of the industrial concern being ascertained the workers during the particular year have their demand for bonus fully satisfied out of the surplus profits and the balance of profits is allocated and carried over in the accounts. No further claim for payment of bonus out of those reserves or undistributed profits can therefore survive. To admit the claim for bonus out of the reserves transferred to the profit and loss account would tantamount to allowing a second bonus on the same profits in respect of which the workers had already received their full bonus in the previous year. The labour force which earns the profits of a particular year by collaborating with the employers is distinct from the one which contributed to the profits of the previous years and there is no continuity between the labour forces which are employed in the industrial concern during the several years. The ratio which applies in the case of the shareholders who acquire the right, title and interest of their predecessors-in-interest does not apply to the labour force and the fact that the shareholders get a dividend by transfer of funds from the reserves and undistributed profits of the previous years would not entitle the workers to demand bonus out of those funds if the working of the industrial concern during the particular year has resulted in a trading loss.

The considerations of social justice imported by the Labour Appellate Tribunal in arriving at the decision in favour of the respondent were not only irrelevant but untenable. Social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations.

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Mr. Isaacs, the learned counsel for the respondent, attempted to give a definition in the following terms :— "social justice connotes the balance of adjustments of the various interests concerned in the social and economic structure of the State, in order to promote harmony upon an ethical and economic basis" and he stated that there were three parties concerned here, *viz.*, the employers, the labour and the State itself, and the conception of social justice had to be worked out in this context. Without embarking upon a discussion as to the exact connotation of the expression "social justice" we may only observe that the concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundation. Indeed the Full Bench of the Labour Appellate Tribunal evolved the abovequoted formula with a view to dispensing social justice between the various parties concerned. It adopted the following method of approach at page 1258 of that judgment :—

"Our approach to this problem is motivated by the requirement that we should ensure and achieve industrial peace which is essential for the development and expansion of industry. This can be achieved by having a contented labour force on the one hand, and on the other hand an investing public who would be attracted to the industry by a steady and progressive return on capital which the industry may be able to offer."

This formula was reiterated in *Textile Mills, M. P.* v. *Their Workmen*(1), and *Famous Cine Laboratory* v. *Their Workmen*(2), and in the latter case it deprecated the idea of adjudicators importing considerations of social justice which were not comprised in that formula :—

"And what is social justice ? Social justice is not the fancy of any individual adjudicator; if it were so then ideas of social justice might vary from adjudicator to adjudicator over all parts of India. In our Full Bench decision (*See* 1950, 2 L.L.J., p. 1247), we carefully considered the question of social justice in relation

(1) (1952) 2 L.L.J. 625. (2) (1953) 1 L.L.J. 466.

to bonus, and there we equated the rights and liabilities of employers and workmen with a view to achieving a just formula for the computation of bonus. That Full Bench decision stands, and this tribunal and all other tribunals are bound by it."

Without committing ourselves to the acceptance of the above formula in its entirety we may point out that the Labour Appellate Tribunal did not apply its own formula to the facts of the present case. It is also significant to note that even while importing considerations of social justice the Labour Appellate Tribunal was oblivious of the fact that it was by their own acts of indiscipline and strike that the workers of the appellant company themselves contributed to the trading losses incurred by the appellant and it hardly lay in their mouth then to contend that they were none the less entitled to payment of bonus commensurate with the dividend paid to the shareholders out of the undistributed profits of the previous years. The Labour Appellate Tribunal also overlooked the fact that but for the Public Companies (Limitation of Dividend) Ordinance of 1948 the whole of the profits of 1948 could have been distributed after paying the workers bonus in that year of four annas in the rupee.

We may before concluding refer to an argument which was addressed to us by Mr. Isaacs, the learned counsel for the respondent, that this Court under article 136 should not interfere with the decisions of the tribunals set up by the Industrial Disputes Act, 1947. This contention can be shortly answered by referring to our decision in *Bharat Bank Ltd., Delhi* v. *Employees of the Bharat Bank Ltd., Delhi*(1), where we held that the Industrial Tribunals were tribunals within the meaning of article 136 and further that article 136 has vested in this Court exceptional and overriding power to interfere where it reaches the conclusion that a person has been dealt with arbitrarily or that a Court or tribunal within the territory of India has not given a fair deal to a litigant. (Vide

(1) [1950] S.C.R. 449.

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Dhakeswari Cotton Mills Ltd. v. *Commissioner of Income-tax, West Bengal*(1).

The result therefore is that the decision of the Labour Appellate Tribunal appealed against must be reversed and that of the Industrial Court (Textiles and Hosiery), Kanpur, restored. The appeal will accordingly be allowed with costs.

Appeal allowed.

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November 25.

SAKHAWAT ALI

v.

THE STATE OF ORISSA.

[MEHR CHAND MAHAJAN C.J., MUKHERJEA, S. R. DAS, VIVIAN BOSE, BHAGWATI and VENKATARAMA AYYAR JJ.]

Constitution of India, arts. 14. 19(1) (*g*)—*Orissa Municipal Act 1950 (Orissa Act XXIII of 1950), ss. 1(3), 1(5), 16(1)(x)—Nomination filed and rejected, effect of—Disqualification for nomination if violates fundamental right—Orissa General Clauses Act, 1937 (Orissa Act I of 1937), s. 23—Scope of.*

The provisions of section 16(1)(x) of the Orissa Municipal Act, 1950, by which a paid legal practitioner on behalf of or against the Municipality is disqualified for election to a seat in such Municipality do not violate the fundamental rights guaranteed to such legal practitioner under article 14 or under article 19(1)(g) of the Constitution of India.

The Orissa Municipal Act, 1950, having received the Governor's assent on November 7, 1950, all preliminary steps specified in section 1(5) of the Act which were taken for the purpose of a Municipal election after such assent are valid even though the Act itself had not then come into force in terms of section 1(3).

Accordingly a nomination filed on March 15, 1951, was validly subjected to the test of disqualification contained in section 16(1)(x) of the Act and the rejection of such nomination on March 25, 1951, was not defective though the Act came into force on April 15, 1951, in the area to which the rejected nomination relates. Section 23 of the Orissa General Clauses Act, 1937, does not authorise the making of rules or bye-laws, which are to come into

(1) [1955] 1 S.C.R. 941.