And finally it is contended that the petitioner has a right as a citizen to approach this Court under Art. 71(1) whenever an election has been held in breach of the constitutional provisions. For the reasons already given, this contention must fail. The right of a person to file an application for setting aside an election must be determined by the statute which gives it, and that statute is Act XXXI of 1952 passed under Art. 71(3). The petitioner must strictly bring himself within the four corners of that statute and has no rights apart from it. The order appealed against is clearly right and this appeal is dismissed.

Petition dismissed.

MESSRS. CROWN ALUMINIUM WORKS

v.

THEIR WORKMEN.

(BHAGWATI, S. K. DAS and GAJENDRAGADKAR, JJ.)

Industrial Dispute—Adjudication—Constitution of wage structure—Revision of such structure, if can be made to the prejudice of workmen—Convention—Governing principle.

Although there can be no rigid and inexorable convention that a wage structure once fixed can never be changed to the prejudice of the workmen, there are well-recognised principles on which such revision must be founded, one important principle, to which there can be no exceptions, is that the wages of workmen cannot be allowed to fall below the bare subsistence level. It follows, therefore, that no industry can have the right to exist if it cannot be maintained except by bringing the wages below that level.

The Constitution of India seeks to create a democratic welfare state and secure social and economic justice to the citizens. Growth of industries and the advent of collective bargaining between organized labour and capital with consequent industrial legislation have made absolute freedom of contract and the doctrine of laissez faire things of the past and they have now to yield place to principles of social welfare and common good.

Industrial adjudication has, thus, to keep in view the ideal of a democratic welfare state and its immediate objective in constituting a wage structure must be to secure the genuine and wholehearted co-operation between labour and capital in the task of production by a just adjustment of their conflicting interests by

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the application of several principles such as for instance the principles of comparable wages, the productivity of the trade or industry, cost of living and ability of the industry to pay.

In a case where the wage structure is of a higher category, it is open to the employer to claim its revision provided he can satisfy the Tribunal that such revision is reasonable on the merits and fair and just to the parties.

Where, however, the employer's financial difficulties are sought to be made a ground for such revision, the Tribunal has to decide whether such difficulties could or could not be adequately met by such retrenchment in personnel as has already been effected by the employer and sanctioned by the Tribunal.

Consequently, in case where the Indistrial Tribunal fixed the wage structure and the dearness allowance but gave the employer liberty to abolish the two hours' concessions, facility bonus and the food concession, holding them to be in the nature of bounty gratuitously paid to the workmen by the employer, and the Labour Appellate Tribunal took the view that these concessions, which had been enjoyed by the workmen for a pretty long time as of right and as part of their basic wages and dearness allowance, had become a term of the conditions of their service, and revised the wage structure in respect of existing workmen by incorporating the concessions into their basic wages and dearness allowance and in doing so relied not merely on the convention that the existing emoluments of workmen should not be reduced to their prejudice but also on other considerations which were neither invalid nor unwarranted by the evidence, its decision was valid in law.

Held, further, that this court would be normally reluctant to entertain an objection that any consideration on which the Appellate Tribunal had relied was either invalid or unwarranted by the evidence on record. Where it finds that certain payments were in fact not gratuitous but were in substance part of the wages and dearness allowance, its decision is not liable to be set aside.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 235 of 1956.

Appeal by special leave from the judgment and order dated the 29th July, 1955, of the Labour Appellate Tribunal of India, Calcutta, in Appeal No. Cal. 182 of 1953.

B. Sen. S. N. Mukherjee and *B. N. Ghosh* for the appellant.

N. C. Chatterjee, D. L. Sen Gupta and *Dipak Datta Chaudhury*, for the respondent.

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1957. October 15. The following Judgment of the Court was delivered by

GAJENDRAGADKAR J.—This appeal by special leave arises out of an industrial dispute between the appellant M/s. Crown Aluminium Works, Belur, represented by Jeewanlal (1929) Ltd., and its Workmen represented by Bengal Aluminium Workers' Union. By their order dated July 31, 1952, the Government of West Bengal referred thirteen matters for adjudication to Shri S. K. Niyogi who was appointed to constitute the Sixth Industrial Tribunal for adjudication under s. 10 of the Industrial Disputes Act, 1947. The learned adjudicator considered the pleas raised, and the evidence led, by the parties before him, investigated into the financial position of the appellant and pronounced his award on October 9, 1953, on all matters referred to him. Both parties were aggrieved by the award and that led to two cross appeals. On July 11, 1955, the Labour Appellate Tribunal disposed of these appeals by a consolidated order. The workmen appear to be satisfied with this order but the appellant is not and so the present appeal. The main grievance which Mr. Sen has made before us on behalf of the appellant is in respect of the revision made by the Appellate Tribunal in the wage structure which was constituted by the original tribunal. Thus, the controversy between the parties in the present appeal lies within a very narrow compass; nevertheless, it would be necessary to mention the history of the dispute in some detail in order to appreciate properly the points at issue between them.

It appears that in 1947, the first Omnibus Engineering Tribunal was constituted to adjudicate upon the industrial disputes for the engineering industry in West Bengal and the matters referred to the tribunal included *inter alia* disputes in regard to basic wages, dearness allowance and leave. This tribunal gave a comprehensive award which was published on June 30, 1948. The appellant was a party to these adjudication proceedings and was governed by the said award. Soon thereafter industrial disputes again arose between the engineering industry and its employees and these were referred to another

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tribunal which in due course examined the disputes and pronounced its award. This award was published on September 21, 1950. By this award the dearness allowance fixed by the first tribunal was increased on the ground of rise in the cost of living index and the leave rules prescribed by the earlier award were modified in the light of the provisions of the Indian Factories Act, 1948. After the first award had come into force the appellant revised its facility bonus from time to time with the object of keeping pace with the rise in the cost of living index. The result was that several components which constituted the wage structure paid by the appellant to his workmen left no cause for grievance to the workmen. So they did not raise any dispute for increase in their dearness allowance and the appellant and its workmen were not parties to the second arbitration proceedings. Meanwhile, a minor industrial dispute arose between the appellant and its workmen and it was referred to the arbitration of Shri G. Palit by the Government of West Bengal by their order dated November 24, 1950. One of the points referred to the Tribunal was in regard to the amount of increment which should be granted to workers in 1950 and the date from which it should be so granted. The appellant denied its liability to pay the increment on the ground that there was no wage structure which permitted such a claim. The appellant also urged before Shri Palit that its workers were on the whole handsomely remunerated. In this connection reliance was placed by the appellant on the payments made by the appellant to its workmen by way of special allowance and bonus, besides dearness allowance and standard wages. It would thus appear that the appellant resisted the claim of its workmen for the increment in wages on the ground that in the wage structure of the appellant additional components had been introduced which made ample provision for the rise in the cost of living. Shri Palit was, however, not impressed with this plea. He thought that by introducing these components in the wage structure the Managing Director "chose to hold the key in his own hands so

that he can manipulate the quantum of benefit under this head and could adjust it to the output in the factory". Shri Palit, therefore, granted the workmen's demands by allowing one anna per day increment though he frankly confessed that this was not based on any actual calculation. He accordingly, directed the appellant to pay the arrears within one month of the award coming into operation to all workmen who were in the roll of the appellant at the end of 1950. Then Shri Palit addressed a word of caution to the appellant and said that it was necessary that the appellant should fix a wage structure as soon as practicable to secure durable peace in the factory. "It will be prudent", observed Shri Palit in his award, "for the company to have a hide bound wage structure instead of having so many flexible component parts of the wage which merely will create unrest". This in brief is the previous history of the dispute between the appellant and its workmen.

On March 28, 1952, the appellant issued a notice to its workmen proposing to make certain modifications. The notice indicated that a reduction of the factory hours from 47 to 40 would be made, the facility bonus would be reduced by 3 as. per day and temporary dearness allowance for the salaried workers would be similarly reduced by 10% of the then current rates. The appellant pleaded in this notice that these economy measures had become necessary owing to the financial set-back of the appellant and would come into effect on June 1, 1952. The Union opposed these changes. A joint discussion was then arranged on June 2 and June 26, 1952. It appears that further economy measures were introduced for discussion between the parties by the notice dated May 30, 1952. These further economy measures related to the reduction of the facility bonus by a further amount of 6 as. per day, withdrawal of two hours' concession of special bonus and discharge of workers of the rolling mills department. The Union did not agree to any of these measures except the reduction of working hours from 47 to 42½ hours a week. Since joint consultations did not lead to any agreement, the appellant, by its notice

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dated June 27, 1952, intimated to the workers that the reduction of working hours and in the facility bonus and dearness allowance as notified on March 28, 1952, would be brought into operation from June 1, 1952. The workers were also told that the two hours' concession would be withdrawn from July 1, 1952, and the workers in the rolling mills department would be discharged with effect from August 1, 1952. The workmen resisted these proposals and took the industrial dispute arising therefrom to the Labour Commissioner immediately. Thereafter a joint conference of the appellant and its workmen was held on July 4, 1952. The intervention of the Labour Commissioner was not effective as the proposals made by him to resolve the dispute between the parties amicably were not acceptable to the parties. The appellant thereupon discharged the workmen of the rolling mills department, 52 in number, with 14 days' notice pay and retrenched other 227 workers of various categories as from July 26, 1952, with a similar notice pay. The Government of West Bengal found that conciliation was not possible and so the industrial dispute in question was referred to the Sixth Industrial Tribunal for adjudication.

As we are concerned in the present appeal only with the constitution of the wage structure and some questions incidental thereto we will now refer to the decisions of the lower tribunals only in respect of these matters. The Sixth Industrial Tribunal considered the financial position of the appellant and revised and reconstituted the wage structure and the dearness allowance in the light of the Omnibus Engineering Awards in West Bengal published in 1948 and 1950. The tribunal held that the two hours' concession, facility bonus and the food concession were in the nature of bounty gratuitously paid by the appellant and as such they could be withdrawn by the appellant at its pleasure. The tribunal also came to the conclusion that since the wage structure had been revised and reconstituted properly, the appellant should be given liberty to abolish the said three concessional payments. It may be relevant to observe

that the tribunal's conclusion in regard to the character of the alleged concessional payments was based principally on the view that in his award Shri Palit had held that these payments were purely concessional payments and that the workmen had no right to claim them as constituents of their wage structure.

The Labour Appellate Tribunal has not agreed with this conclusion. The view that the Appellate Tribunal has taken is that these so-called concessional payments have been enjoyed by the workmen for a pretty long time as of right and as part of their basic wages and dearness allowance and as such they have become a term of the conditions of their service. Besides, the appellate tribunal has observed that it has been the convention with industrial tribunals not to reduce the existing emoluments of the workmen to their prejudice. In the result the wage structure constituted by the tribunal was modified by the award of the appellate tribunal in respect of existing workmen. The main conditions introduced by these modifications were three :

"1. The total basic wages of a time-rated worker together with the two hours' concession immediately before 1-6-'52 shall hereinafter be called his existing basic wage.

2. The total of the temporary dearness allowance and the facility bonus as was available to a worker prior to 1-6-'52 and the food concession wherever admissible to a worker under the rules of the company shall hereinafter be called his existing dearness allowance, no matter if any portion of these benefits has been curtailed or stopped in the meantime.

3. The two hours' concession, the facility bonus and the food concession shall cease to have any separate existence distinct from the basic wages and dearness allowance of the worker on and from the date when this decision comes into force, hereinafter called the relevant date."

Both the original and the appellate tribunals have agreed in providing that the existing basic wages and the existing total emoluments shall not be reduced.

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For the appellant Mr. Sen has contended that the Labour Appellate Tribunal was in error in assuming that it has been the convention in industrial adjudications not to reduce the existing emoluments of the workmen to their prejudice in any case. He contends that just as the rise in the cost of living index or similar relevant factors may justify the revision of the wage structure in favour of the workmen, so should the revision of the wage structure be permissible in favour of the employer in case the financial position of the employer has considerably deteriorated or other relevant factors indicate such a revision. Indeed Mr. Sen made it clear during the course of his arguments that in the present appeal he was more concerned to challenge the validity of the assumption made by the Labour Appellate Tribunal in that behalf, rather than the propriety or correctness of the actual modifications made by the Appellate Tribunal in its award. The point thus raised by Mr. Sen is no doubt of general importance and it must be considered in all its aspects.

Before dealing with this point, it would be relevant to refer to the findings made by both the tribunals in regard to the financial position of the appellant. The present unit of the aluminium industry which was originally started by the Americans was taken over by the appellant from the Americans on August 9, 1951. The main business of the appellant is to manufacture household utensils from aluminium circles. These circles were imported until the last war. During the war, import of these articles became difficult and so a rolling mills department for manufacturing circles from scrap materials was started. It is true that utensils made from such circles were inferior in quality; but import difficulties were insurmountable and so even these inferior utensils found a good market. As soon, however, as better quality circles became available the demand for these utensils rapidly decreased and the business began to incur loss. The management was thus compelled to close down the rolling mills permanently in February, 1952. As we have already mentioned, the workmen employed in

the rolling mills were ultimately discharged on July 15, 1952.

The appellant placed before the tribunals below the relevant figures from the statements of accounts from 1947 to September 1952. Both the tribunals have examined these figures and have come to the conclusion that the economic position of the appellant on the whole was none too bright. Fall in the sale of utensils was noticeable during these years and if the utensils were not disposed of in the market quickly they are likely to lose their lustre and glaze and would be even stained if they were to be stored in the godown for any length of time. This in turn would involve extra expenditure and would contribute to further losses. It appears to be the concurrent finding of both the tribunals that the manufacturing cost in 1952, as in some preceding years, exceeded the sale price and this undoubtedly would be a disquieting feature in any industrial concern. The original tribunal did not see any prospect of improvement in the appellant's financial position; whereas the Appellate Tribunal was disposed to take the view that as a result of the substantial retrenchment effected by the appellant "financial position of the relevant unit of the aluminium industry appears to have improved". It is in the background of these findings that Mr. Sen has contended that the wage structure constituted by the Appellate Tribunal would work a hardship on the appellant and his grievance is that in reconstituting the wage structure the Appellate Tribunal was very much influenced by the assumption that the wage structure can never be revised to the prejudice of workmen.

In dealing with this question, it is essential to bear in mind the main objectives which industrial adjudication in a modern democratic welfare state inevitably keeps in view in fixing wage structures. "It is well known" observes Sir Frank Tillyard, "that English Common Law still regards the wage bargain as a contract between an individual employer and an individual worker, and that the general policy of the law has been and is to leave to the two contracting parties

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a general liberty of bargaining, so long as there are no terms against public policy"(1). In India as well as in England and other democratic welfare states great inroad has been made on this view of the Common Law by labour welfare legislation such as the Minimum Wages Act and the Industrial Disputes Act. With the emergence of the concept of a welfare state, collective bargaining between trade unions and capital has come into its own and has received statutory recognition; the state is no longer content to play the part of a passive onlooker in an industrial dispute. The old principle of the absolute freedom of contract and the doctrine of *laissez faire* have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structures as affording "a bulwark against the dangers of a depression, safeguard against unfair methods of competition between employers and a guarantee of wages necessary for the minimum requirements of employees"(2). There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principal objective of a welfare state, to secure "to all citizens justice, social and economic". To the attainment of this ideal the Indian Constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good to which we have just referred.

Though social and economic justice is the ultimate ideal of industrial adjudication, its immediate objective in an industrial dispute as to the wage structure is to settle the dispute by constituting such a wage structure as would do justice to the interests of both labour and capital, would establish harmony between them and lead to their genuine and wholehearted co-operation in the task of production. It is obvious that co-operation between capital and labour would lead to more production and that naturally helps national economy and progress. In achieving this immediate

(1) "The Worker and the State" by Sir Frank Tillyard, 3rd Ed., p. 37.
(2) "Wage Hour Law" Coverage—By Herman A. Wecht, p. 2.

objective, industrial adjudication takes into account several principles such as, for instance, the principle of comparable wages, productivity of the trade or industry, cost of living and ability of the industry to pay. The application of these and other relevant principles leads to the constitution of different categories of wage structures. These categories are sometimes described as living wage, fair wage and minimum wage. These terms, or their variants, the comfort or decency level, the subsistence level and the poverty or the floor level, cannot and do not mean the same thing in all countries nor even in different industries in the same country. It is very difficult to define or even to describe accurately the content of these different concepts. In the case of an expanding national economy the contents of these expressions are also apt to expand and vary. What may be a fair wage in a particular industry in one country may be a living wage in the same industry in another country. Similarly, what may be a fair wage in a given industry today may cease to be fair and may border on the minimum wage in future. Industrial adjudication has naturally to apply carefully the relevant principles of wage structure and decide every industrial dispute so as to do justice to both labour and capital. In deciding industrial disputes in regard to wage structure, one of the primary objectives is and has to be the restoration of peace and goodwill in the industry itself on a fair and just basis to be determined in the light of all relevant considerations. There is, however, one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such

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terms. In considering the pros and cons of the argument urged before us by Mr. Sen, this position must be borne in mind.

The question posed before us by Mr. Sen is: Can the wage structure fixed in a given industry be never revised to the prejudice of its workmen? Considered as a general question in the abstract it must be answered in favour of Mr. Sen. We do not think it would be correct to say that in no conceivable circumstances can the wage structure be revised to the prejudice of workmen. When we make this observation, we must add that even theoretically no wage structure can or should be revised to the prejudice of workmen if the structure in question falls in the category of the bare subsistence or the minimum wage. If the wage structure in question falls in a higher category, then it would be open to the employer to claim its revision even to the prejudice of the workmen provided a case for such revision is made out on the merits to the satisfaction of the tribunal. In dealing with a claim for such revision, the tribunal may have to consider, as in the present case whether the employer's financial difficulties could not be adequately met by retrenchment in personnel already effected by the employer and sanctioned by the tribunal. The tribunal may also enquire whether the financial difficulties facing the employer are likely to be of a short duration or are going to face the employer for a fairly long time. It is not necessary, and would indeed be very difficult, to state exhaustively all considerations which may be relevant in a given case. It would, however, be enough to observe that, after considering all the relevant facts, if the tribunal is satisfied that a case for reduction in the wage structure has been established then it would be open to the tribunal to accede to the request of the employer to make appropriate reduction in the wage structure, subject to such conditions as to time or otherwise that the tribunal may deem fit or expedient to impose. The tribunal must also keep in mind some important practical considerations. Substantial reduction in the wage structure is likely to lead to dis-

content among workmen and may result in disharmony between the employer and his employees; and that would never be for the benefit of the industry as a whole. On the other hand, in assessing the value or importance of possible discontent amongst workmen resulting from the reduction of wages, industrial tribunals will also have to take into account the fact that if any industry is burdened with a wage structure beyond its financial capacity, its very existence may be in jeopardy and that would ultimately lead to unemployment. It is thus clear that in all such cases all relevant considerations have to be carefully weighed and an attempt has to be made in each case to reach a conclusion which would be reasonable on the merits and would be fair and just to both the parties. It would be interesting to notice in this connection that all the tribunals that have dealt with the present dispute have consistently directed that existing wages should not be reduced to the prejudice of the workmen. In other words, though each tribunal attempted to constitute a wage structure in the light of materials furnished to it, a saving clause has been added every time protecting the interests of such workmen as were drawing higher wages before. Eeven so, it would not be right to hold that there is a rigid and inexorable convention that the wage structure once fixed by industrial tribunals can never be changed to the prejudice of workmen. In our opinion, therefore, the point raised by Mr. Sen must be answered in his favour subject to such relevant considerations and limitations as we have briefly indicated.

Mr. Sen is, however, not right in contending that the final decision of the Appellate Tribunal is based solely or even chiefly on the alleged convention to which the Appellate Tribunal has referred. As we have already pointed out, the tribunal has also found that substantial retrenchment which has been sanctioned by both the tribunals would improve the financial position of the appellant. In the opinion of the Appellate Tribunal, the downward tendency in the cost of living index on which the appellant partly relied could not be considered in the present proceedings since no specific issue had been referred to the

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tribunal in that behalf. Besides, enough material had not been produced to show to what extent the cost of living index had fallen and whether this fall was temporary or had come to stay. The Appellate Tribunal, it appears, thought that the wages paid by the appellant to its workmen "are the irreducible minimum or may at best be in the region of fair wages with a small margin over the minimum wage." If, in reaching its final conclusions, the Appellate Tribunal has relied not only upon the alleged convention but also upon the other circumstances just mentioned, it would not be fair to say that its conclusion is vitiated in law or is otherwise unsound. Normally, this court would be slow to entertain an objection that some of the considerations which have weighed with the Appellate Tribunal in reaching its final decision are either invalid or are not borne out by sufficient evidence on record.

There is another point which Mr. Sen has raised before us in regard to the true character of the concessional payments made by the appellant to its workmen and which have been incorporated by the Appellate Tribunal in the wage structure. The Appellate Tribunal has taken the view that these concessional payments really amounted to payments made to the workmen as a matter of right and it is the correctness of this conclusion that is challenged before us by Mr. Sen. Let us then consider the genesis of these payments. Prior to the new Factories Act, the appellant's workmen worked on an average for 59 hours of work made up of the usual 54 hours of work and overtime. After the Factories Act came into force, the working hours had to be reduced but in order to compensate the time-rate workers for reduction in their wages, the management added to the daily earnings of such workers the wages for two hours. The additional two hours' wages thus awarded to the workers came to be known as two hours' concession or special bonus. This bonus was introduced in August, 1946. In April, 1945, facility bonus had been introduced at 3 as. per day for workers getting basic wages equal to or less than 10 as. per day and 4 as. per day for workers whose basic wages were over 10 as. per day. It appears that

this facility bonus was revised from time to time in the upward direction, and it used to be paid prior to June 1952 at a graduated scale linked to the basic wages in slabs varying from 6 as. to 12 as. per day. Besides, the appellant introduced food concession to workers employed prior to 1951. Thus the constitution of the wage structure in the appellant's concern included dearness allowance, facility bonus and food concession. In dealing with the true nature of these payments it is necessary to take into account the appellant's case as deposed to by the appellant's Labour Officer and Assistant to the Manager, Shri Jaisuklal Shah. According to Shri Shah, the facility bonus was an additional allowance for the high cost of living very much on the same footing as dearness allowance. "Two hours' allowance", said Shri Shah, "is referred to as special bonus or extra bonus. It was paid *because the workers demanded* and it was possible to pay it at that time". These statements lend considerable support to the workmen's case that the payments in question constituted a part of the wage structure of the appellant. Indeed, even in the statement of the appellant before the industrial tribunal in the present proceedings, it is specifically averred in paragraph 2 that prior to June, 1952, the company's pay structure consisted of five items, *viz.*, (1) basic wage, (2) dearness allowance, (3) special bonus or extra bonus, (4) facility bonus or special allowance, and (5) food concession. The attitude adopted by the appellant before Shri Palit is also consistent with this pleading and with the evidence given by Shri Shah in the present proceedings. Before Shri Palit, the appellant had urged that there was no occasion to grant increment to its workmen because under the categories of several allowances the company had substantially constituted its wage structure to the benefit of the workmen. In this connection, it would also be material to point out that it was because these additional payments were made by the appellant to its workmen that the workmen did not raise any dispute and did not join the arbitration before the Second Engineering Tribunal.

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Besides, these payments have been made for some years and that also is a relevant factor to consider in dealing with the true character of these payments. If the Labour Appellate Tribunal took into account all these facts and held that the payments in question are not matters of bounty but that, in essence and in substance, they form part of the basic wage and dearness allowance payable to the workmen, we see no reason to interfere with its conclusion. It is not disputed before us that if this conclusion is right, the Labour Appellate Tribunal has properly revised the wage structure as constituted by the original tribunal and included the payments in question in appropriate categories.

There is one more point which may be mentioned before we part with this case. Mr. Sen incidentally argued that the result of the award passed by the Labour Appellate Tribunal is that there will be two scales of wage structure, one for those who are already in the employment of the appellant and the other for the new entrants. Since we have held that the modifications made by the Appellate Tribunal in favour of the existing workmen cannot be successfully challenged by the appellant, we do not think it necessary to consider whether wage structure which has been fixed by the Appellate Tribunal in regard to new entrants into the service of the appellant is justified or not.

The result is that both the contentions raised by Mr. Sen substantially fail. The appeal must accordingly be dismissed with costs.

Appeal dismissed.