intention was to benefit the assessee Company by the acquisition of a large block of shares at a very much larger price than obtaining in the market, to acquire certain agencies of a profitable character.

In our opinion, this transaction must be regarded as one on the capital side. Shares were never treated as part of the stock-in-trade. They were not sold in the market, but were sold at a loss to another Company belonging to the same group, with the obvious intention of setting off the losses against the profits, thus cancelling the profits, and saving them from taxation.

In the result, the appeal is allowed with costs on the respondent.

Appeal allowed.

EMPLOYERS IN RELATION TO THE BHOWRA COLLIERY

v.

THEIR WORKMEN

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Bonus—Malis Working in officers bungalows—Whether entitled—Coal Mines Provident Fund and Bonus Schemes Act, 1948 (46 *of* 1948) *s.* 5.

In exercise of the power conferred by s. 5 of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, the Central Government framed a Bonus Scheme for the payment of bonus to employees of coal mines. Paragraph 3 of the scheme made every employee in a coal mine eligible for a bonus except, *inter alia*, "a mali on domestic and personal work". The question for consideration was whether under this paragraph the malis working in the officers' bungalows had any right to bonus.

Held, that these malis were not entitled to any bonus under the Bonus Scheme. Paragraph 3 contemplated malis who were employees of the colliery owners and were yet on domestic work. Domestic meant as of the home. The malis

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who were working in the bungalows occupied by the officers, were working in the homes of the officers. They were therefore, on domestic work. The work they were doing did not cease to be domestic work because the bungalows belonged not to the officers but to the appellant or because they were under the control and orders of the appellant. Further, these malis were on personal work. The word "personal" was used in the sense of work for an individual as distinguished from work for the coal mine as an institution. These malis were undoubtedly working for the officers as individuals.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 96 of 1961.

Appeal by special leave from the award dated December 7, 1959, of the Central Government Industrial Tribunal Dhanbad in reference No. 42 of 1959.

S. C. Banerjee and *P. K. Chatterjee*, for the appellant.

Janardan Sharma, for the respondent.

1962. January 30. The Judgment of the Court was delivered by

Sarkar J..

SARKAR, J.—The appellants, the Bhowra Kankanee Coal Co. Ltd., own the Bhowra and other collieries. On the Bhowra Colliery there are a number of residential bungalows belonging to the appellants occupied by their officers employed in the colliery. The appellants employ certain malis for working as such in these bungalows and their duty is to look after and maintain the gardens there. A dispute arose between the appellants and their workmen as to whether these malis, who were fourteen in number, were entitled to bonus. By an order made on June 23, 1959, under the Industrial Disputes Act, 1947, the Government of India referred this dispute along with another with which we are not concerned in this case, for adjudication to the Industrial Tribunal, Dhanbad. The Points referred concerning the dispute abovementioned were in these terms :

(1) Whether the withdrawal of the benefit of bonus provided in the Coal Mines Bonus

Scheme by the management of the Bhowra Colliery from the following garden mazdoors/malis is justified. If not, to what relief are they entitled and from what date?

(2) Whether the garden mazdoors/malis referred to above are employed on domestic and personal work within the meaning of paragraph 3 (b) of the Coal Mines Bonus Scheme, 1948 and if not, to what relief are they entitled and from what date?

The points so referred were decided by the Tribunal against the appellants by an award made on December 7, 1959, and the present appeal is against that award.

Till January 1, 1955, the Bhowra and certain other collieries managed as a group, were owned by the Eastern Coal Company Ltd., and on that date these collieries were sold to the appellants. At the time when this sale was being arranged, the workmen in these collieries raised a dispute that their services should be treated as continuous inspite of the transfer of the collieries from one owner to another by the sale and that the conditions of their service and the facilities which they were enjoying under the previous owners should be guaranteed and continued by the succeeding owners, that is the appellants, after the latter took over the collieries. At the instance of the Conciliation Officer appointed under the Act this dispute was settled by an agreement made on January 14, 1955, to which the Conciliation Officer the workmen the previous owners and the appellants were parties. Paragraph 3 of this agreement provided as follows: "Agreed that the existing service conditions and the facilities will be continued, excepting pension."

Now in 1948 an Act called the Coal Mines Provident Fund and Bonus Schemes Act had been passed by s. 5 of which the Central Government was

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empowered to frame a bonus scheme for the payment of bonus to the employees of coal mines, The Central Government had framed a Bonus Scheme under this provision in 1948 and since then the previous owners had been paying the malis employed for the bungalow gardens belonging to the Bhowra Colliery, bonus in terms of it. In 1951 they once stopped the bonus but that caused an industrial dispute and they thereupon restored the bonus. Upto the acquisition of the Bhowra Colliery by the appellants the position thus was that these malis had been receiving bonus since 1948 excepting for a short period during which it had been stopped as earlier mentioned. After they became the owners of the Bhowra Colliery, the appellants however stopped the payment of bonus to these malis. This raised the industrial dispute which had led to this appeal.

Paragraph 3 of the Bonus Scheme framed under the Act, so far as relevant for this case, is in these terms :

> *Paragraph 3.* Except as hereinafter provided every employee in a coal mine to which this Scheme applies shall be eligible to qualify for a bonus.
>
> Exceptions :— An employee in a coal mine shall not be entitled to a bonus under the Scheme for the period during which—
>
> (a) .....
>
> (b) he is employed as a mali, sweeper or domestic servant on domestic and personal work;
>
> (c) .....

One of the questions raised in this appeal is whether the bungalow malis were entitled to bonus under this paragraph. The appellants contended before the Tribunal that malis as a class were excepted from the benefit of the Bonus Scheme by the provision

in exception (b) in this paragraph. They further contended in the alternative that these malis were excepted in any event because they were malis employed on domestic and personal work within the meaning of the exception. The Tribunal rejected these contentions of the appellants and held (a) that these malis were entitled to bonus under paragraph 3 of the agreement of January 14, 1955 and (b) that they were not employed on domestic and personal work and were therefore not within the exception. For these reasons the Tribunal held that the withdrawal of the bonus by the appellants was not justified.

It is not clear on what ground the Tribunal held that the malis were entitled to bonus under paragraph 3 of the agreement of January 14, 1955. It may be that the Tribunal thought that the Bonus Scheme framed by the Central Government formed a condition of service of the malis or a facility to which they were entitled and which the appellants undertook by the agreement of January 14, 1955, to continue. If this was the point of view, then of course the further question still remains whether the malis were on domestic and personal work for if they were, then they would not be entitled to the bonus as a facility or a condition of their service under the Scheme.

It was however contended on behalf of the respondent workmen in this Court that the right to bonus was a condition of the service of the Malis and a facility to which they were entitled independently of the Bonus Scheme and that this is what the Tribunal had held. The record however is not very clear on this question. The appellants dispute the contention of the workmen and further say that in any event the Tribunal had no jurisdiction to decide that question for the question referred to it was the right of the malis to bonus under the Bonus Scheme.

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We think that the appellants' contention is well founded. What had been referred was the question "whether the withdrawal of the benefit of bonus provided in the Coal Mines Bonus Scheme .....is justified". On the language of the order of reference it seems to us that the dispute referred was as to the right as provided in the Bonus Scheme and not as to any other right. This also was the workmen's case before the Tribunal as appears from its written statement filed there. In the statement of case filed in this appeal also, the respondent took the same position. We therefore think that if the Tribunal had held that the malis were entitled to the bonus under the agreement of January 14, 1955 independently of the Bonus Scheme it had exceeded its jurisdiction and its award cannot be upheld.

The question still remains as to whether on a proper construction of paragraph 3 of the Bonus Scheme these malis had any right to bonus. That was undubitably the question referred to the Tribunal. The words requiring construction are "on domestic and personal work". The Tribunal held that malis working in bungalows belonging to the appellants were not working for the home or household of private persons or individuals and were therefore not on domestic work. It also held that as the malis work under the direction and control of the appellants and were liable to be transferred from one bungalow to another or to some other work they were not on personal work. We are unable to accept this construction of paragraph 3 of the Bonus Scheme. Domestic means as of the home. We feel no doubt that the malis who were working in the bungalows occupied by the officers were working in the home of the officers. They were, therefore, on domestic work. The work they were doing would not cease to be domestic work because the bungalows belonged not to the officers but to the appellants. Whether a work

is domestic or not would depend on its nature. Suppose an officer has employed his own mali for working in the bungalow garden, that mali would surely be on domestic work. This is not disputed. The nature of that work would not change because the mali was working not under the orders of the officer occupying the bungalow but under the appellants, nor because the bungalow did not belong to the officer but to the appellants. Nor for the same reason does the fact that the malis were employed by the appellants and not by the officers make any difference. The fact that Malis might be transferred to other jobs and cease to be malis altogether is also irrelevant. On such transfer they might become entitled to bonus. The exception in paragraph 3 deprives them of the bonus only for the time they are malis on domestic and personal work.

Paragraph 3, of the Bonus Scheme contemplated malis who were employees of the colliery owners and were yet on domestic work. The Tribunal thought that paragraph 3 only contemplated cases of malis appointed by the officers who were paid some allowance by the colliery owners for keeping malis in the gardens of the bungalows occupied by them. It may be that malis so engaged would be the employees of the colliery owners, as the term employee is defined in the Act under which the Bonus Scheme was framed, but we see no reason to restrict malis on domestic work referred to in paragraph 3 to such malis only. As we have said earlier, whether a mali is on domestic work or not would depend on the nature of the work. As the work which the malis with whom we are concerned did, was domestic work, these malis must be deemed to be within the exception mentioned in paragraph 3. They would not cease to be malis on domestic work because they had been working in the bungalows belonging to the appellants or were under their control and orders.

We further feel no difficulty in holding that

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these malis were on personal work. The word "personal" is obviously used in the sence of work for an individual as distinguished from work for the Coal mine as an institution. These malis were undoubtedly working for the officers as individuals. Therefore they were on personal work.

For these reasons in our view the malis in the present case were not entitled to any bonus under the Bonus Scheme. As in our opinion the order of reference does not raise any question as to whether the malis were entitled to bonus apart from the Bonus Scheme, it is unnecessary for us to express any opinion on that question and we do not do so.

The result is that this appeal is allowed and we set aside the award of the Tribunal in so far as it is concerned with the two points of dispute earlier set out which had been referred to it. We do not think it a fit case to make any order for costs.

Appeal allowed.

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January 30.

GIRJA SHANKAR KASHI RAM

v.

THE GUJARAT SPINNING & WEAVING CO. LTD.

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Exclusive right of Representative Union to represent employees—Bombay Industrial Relations Act (XI of 1947) ss, 27A, 32, 33, 42 (4).

The Gujarat Spinning & Weaving Co. Ltd., closed its business on May 14, 1953, and sold its assets to Tarun Commercial Mills Co. Ltd. The old company had discharged all its workmen when it closed its business. The new company re-started the business after a week and took in its service the workmen of the old company. When the closure took place a dispute was pending between the old company and its workmen with respect to bonus. The Textile Labour Association, which is a Representative Union of the textile workers in the city of Ahmedabad, filed an application before the Labour