

(2) *Dearness Allowance.*—With effect from 1st January 1947 the employees should be paid dearness allowance on the following basis subject to rise upward and downward from time to time :—

(i) Employees receiving up to Rs. 100 per mensem as salary for regular time (not overtime)—Millowners' scale of the Textile workers in the city of Bombay or 60 per cent. of the amount representing the earnings on regular time (not overtime) whichever is higher.

(ii) Employees receiving in excess of Rs. 100 per mensem as salary for regular time (not overtime)—60 per cent. of first Rs. 100 and 40 per cent. on the balance of the amount on regular time (not overtime).

It should be arranged in such a way that the figure of 60 per cent. should be based on cost of living index figure 280 and that a change upward or downward will be met on the basis of 5 per cent. for every rise or fall of 15 points from the basic figure (280).

(3) *Gratuity.*—Gratuity should be paid to all employees on the following basis :—

(i) (a) On the death or disability or old age of the employee while in service of the Company—One month's salary for each year of service.

(b) On retirement or resignation—One month's salary for each year of service.

(ii) On termination of service by the Company :—

(a) After 10 years of continuous service—One month's salary for each year of service with a minimum of 13 months' wages.

(b) After 5 years but less than 10 years—12 months' wages.

(c) Less than 5 years—6 months' wages.

For the purpose of calculating the gratuity should be based on the monthly salary last drawn by the employees.

(4) *Leave Rules*—(i) *Office Staff*—

(a) *Privilege Leave.*—One month's privilege leave with full pay and dearness allowance should be granted for every eleven months of service and such leave should be allowed to be accumulated up to three months without prejudice to privilege leave already accrued due. This demand of privilege leave should be calculated from 1st January 1948. The employee when going on privilege leave should be allowed travelling allowance amounting to one month's salary. If the employee retires of his own accord or is discharged by the Company, an amount equivalent to the pay for the leave accrued to him (plus travelling allowance as detailed above) should be paid to him in lieu of the privilege leave.

(b) *Sick Leave.*—A minimum of fifteen days' leave with pay and dearness allowance in a year should be allowed. Such leave can be accumulated if it is not taken in the past.

An employee who is absent due to sickness for five days or less should not be required to produce a medical certificate. An employee should not be debarred from using his sick leave immediately

after expiration of privilege leave, on submitting a medical certificate in person or by post.

(c) *Casual Leave*.—Fifteen days' casual leave with full pay and dearness allowance in every year should be granted to each employee who should be allowed to avail the maximum of 6 (six) consecutive working days' leave at a time.

(ii) *Workers*.—Workers should be given leave as follows:—

(a) *Privilege Leave*.—Fifteen days' privilege leave with full pay and dearness allowance should be granted for each year of service and such leave should be allowed to be accumulated up to forty-five days without prejudice to privilege leave already accrued due. This demand of privilege leave should be calculated from 1st January 1948. The workers when going on privilege leave should be allowed travelling allowance amounting to one month's salary. If the employee retires of his own accord or is discharged by the Company an amount equivalent to the pay for the leave accrued to him (plus travelling allowance as detailed above) should be paid to him in lieu of privilege leave.

(b) *Sick Leave*.—A minimum of ten days with pay and dearness allowance in a year should be allowed. Such leave can be accumulated if it is not taken in the past.

A worker who is absent due to sickness for three days or less should not be required to produce a medical certificate. An employee should not be debarred from using his sick leave immediately after expiration of privilege leave, on submitting a medical certificate in person or by post.

(c) *Casual Leave*.—Ten days' casual leave with full pay and dearness allowance in every year should be granted to each worker who should be allowed to avail the maximum of three consecutive working days' leave at a time.

(5) *Bank Holidays*.—All Bank Holidays with full pay and dearness allowance should be given to all employees.

(6) *Overtime*.—Overtime, i.e., more than normal schedule hours put in by the employees should be paid at double the rate of pay.

(7) *Working hours*.—Following should be the working hours for the show room:—

From 10 a.m. to 5-30 p.m. on Week days.

From 10 a.m. to 1-00 p.m. on Saturdays.

Peons to start work 15 minutes earlier.

(8) *Recognition of the Union*.—The Bombay Automobile Employees' Union should be recognised with the following terms:—

(a) Union representatives should be allowed to collect subscription or donations in the premises of the concern.

(b) Union representative should be allowed to inspect the concern whenever necessary.

(c) Union representative should be allowed to put in their notices and circulars on board in the premises of the concern.

(d) Union representative should be allowed to discuss and meet members on the premises of the concern.

(e) Union representative should be allowed to contact members in connection with matters affecting members of the concern.

(9) *Retrenchment from service.*—If retrenchment is inevitable and justified it should be on the following terms:—

(a) Juniors in service to be retrenched first.

(b) Retrenched employees should be given preference over others in case of fresh recruitment at a later date, and they should be given fifteen days' intimation prior to joining duties.

(c) All the benefits and privileges in regard to the pending disputes should be given to such employees as soon as the decisions are out.

(d) Compensation equivalent to six months' salary with dearness allowance should be paid to retrenched employees.

(10) *Security of service.*—(a) Liberal rules of service should be framed with mutual agreement between the Union and the Company. No amendments to such rules should be made without mutual agreement. The Company should furnish a certified copy of its "Service Rules" to each of its employees.

(b) Dismissal or any disciplinary action should not be enforced directly or indirectly on any employee for participating in or promoting legitimate Union activities.

(c) Dismissal or any disciplinary action whatsoever should not be enforced against an employee without a proper charge sheet having been framed and furnished to him. He should be given adequate opportunity for defence. In cases likely to result in dismissal the enquiry should be held by the highest executive of the Company.

(11) *Officiating Allowance.*—When an employee officiates for a week or more for another employee drawing a higher salary he shall be paid 50 per cent. of the difference in salary for the period he actually officiates.

(12) *General.*—Without prejudice to anything contained in these terms nothing shall adversely affect or take away from an employee or a group of employees any privileges or securities already vested in and enjoyed by such employees or group of employees.

2. The usual notices to parties to file their respective Statement of Claim and the Written Statement were issued on 27th December 1948. The General Secretary, Bombay Automobile Employees' Union (hereinafter called the Union) was called upon to file his Statement of Claim on or before 10th January 1949 and the Manager, the Bombay Cycle and Motor Agency Ltd. (hereinafter called the Company), was called upon to file the Written Statement on or before the 20th January 1949. With a view to enable such of the workers as were not represented by the Bombay Automobile Employees' Union to put forward their case, a notice requiring them to file a Statement of Claim on or before the 10th January 1949, together with its translations in the regional

languages was caused to be posted on the notice board of the Company. The General Secretary of the Union filed the Statement of Claim on the 10th January 1949. On the 15th January 1949, Messrs. Payne & Co., Attorneys for the Company, made an application for extension of time for filing the Written Statement up to the 27th January 1949, and extension was accordingly granted. The Written Statement of the Company was filed on the 27th January 1949. On the 2nd February 1949, notices were issued to the parties intimating to them that the matter would be heard on the 8th February 1949. On the 5th February 1949 the parties filed a joint purshis seeking postponement of the hearing to the 21st February 1949. The adjournment asked for was granted and the matter was heard on the 21st, 22nd and 24th February 1949.

3. The Bombay Cycle and Motor Agency Ltd., Bombay, which had its beginning in the Bombay Cycle Agency formed in 1885, is one of the earliest pioneers of the Motoring Industry in India and, certainly, the oldest Motor agency in Bombay. The concern was registered as a public limited Company in 1949 under the Indian Companies Act. The original capital of the Company was Rs. 50,00,000 divided into 50,000 shares of Rs. 100 each of which the subscribed and paid up capital was Rs. 28,49,200 divided into 28,492 shares of Rs. 100 each. Owing to losses incurred by the Company in about November 1924, the capital of the Company had to be reduced from Rs. 28,49,200 to Rs. 5,69,840 by reducing the capital in respect of each share from Rs. 100 to Rs. 20 and by writing off the lost capital. Since then the capital of the Company has been Rs. 5,69,840. Upto March 1943, the Company had to borrow moneys for the purposes of its business and it was only in 1943-44 that the Company was able to pay off the debt by selling of the immoveable property of the Company at Sandhurst Bridge. In 1937, the workshop of the Company at Tardeo was given to one Mr. Narielwalla to run and it was run by him till 1st October 1944 when the Company took it over from him. During the ten years up to 1947, the Company declared a dividend of annas 12 per share (3.75 per cent.) during three years (1937, 1938 and 1941), Rupee one per share (5 per cent.) during three years (1942, 1945 and 1946) and Rupee one annas eight per share (7.5 per cent.) during two years (1943 and 1944). The Company had not declared any dividend during 1939 and 1940. In 1947, the Company, instead of declaring a dividend, issued bonus shares at the rate of one share of Rs. 20 for three shares in the existing capital held by the share holders. This would no doubt amount to a dividend of $33 \frac{1}{3}$ per cent. It has however to be remembered that the Shareholders had, on account of the writing off the lost capital, lost Rs. 80 per share in 1924. These bonus shares were given by capitalising a sum of Rs. 1,90,000 out of the amount of Rs. 3,61,662-15-11 standing to the credit of the Capital Reserve Fund. The Capital Reserve Fund, as disclosed by the Balance-sheet for the year ending 31st March 1948, stands at Rs. 1,71,662-15-11. In the year 1946-47 the Company had made a profit of Rs. 1,53,563-7-3 (subject to taxation). In the year 1947-48, the Company made a profit of

Rs. 9,03,118-7-10. This clearly shows that the Company is in quite a sound financial condition at present.

4. In the course of the arguments Mr. Trivedi, who appeared for the workers, stated that he would not press Demand Nos. 5, 8, 9, and 10 relating respectively to Bank Holidays, recognition of the Union, retrenchment and security of service.

5. *Demand No. 1: Increments in Salary.*—The Demand of the Union is that all employees in the office and the workshop should be given increments from 1st January 1947 at the following rate:—

(i) 15 per cent. increment to those drawing a salary up to Rs. 100 per month.

(ii) 10 per cent. increment to those drawing a salary above Rs. 100.

In respect of this demand the contention of the Company is that the Company has been giving increments based on merit and good service and that consequently the demand is not justified. The Union has at Exhibits 18 and 19 filed statements giving the starting salary and the increments given to the employees. Those statements clearly show that what the Company states is correct. It is no doubt true that at present the Company has no regular system of increments, but that by itself does not justify a demand for increment at the rate claimed. From Exhibits 18 and 19 I find that the last increment was given on 1st January 1948. The Company stated that no increments were given thereafter as the dispute in respect of wages had started in the meantime. I do not therefore think that the demand for an increment as claimed is justified and I reject it.

As I have rejected the demand for increments at the rates claimed, the question retrospective effect from 1st January 1947 does not arise. I may however mention that even in its letter dated the 9th June 1948 (Ex. 35) the Union's demand was that the present scales of salaries be systematised and that the demand for increments at the rates claimed was for the first time put forward on 15th October 1948 under Ex. 38.

The Union further demands that scales of pay for the future be fixed. Under this demand the Union wants the Tribunal to classify the several workers into different grades or categories. Mr. Kolah, the learned Counsel for the Company, contended that the terms of reference would not permit the Tribunal to entertain the demand for classification of workers. There is much force in Mr. Kolah's contention and I do not think it is open to me to classify or reclassify the workers under different grades or categories. The Central Pay Commission have at page 125 of their report observed:—

“The assignment of a particular worker to one category or another must largely be a matter of opinion based on standards recognised in industry. It seems to us convenient if each important industrial establishment will constitute a Board, say of three of its officers, to determine the class in which every worker in that establishment is to be placed.”

I would, therefore, only recommend to the Company that at the time of giving effect to the scales of salary that I am laying down the Company should consider the question of classifying the workers under different categories by adopting the method suggested by the Central Pay Commission. I would also recommend that in that work the Company should have a representative of the workers associated with the officer or officers appointed for that purpose in a purely advisory capacity.

In the original demand no specific scales either for the office staff or the workshop staff were mentioned. In the statement of claim specific scales were mentioned for the first time and the Company has by its written statement contended that the scales proposed by the Union are exorbitant and unreasonable. Mr. Kolah pointed out that the acceptance of the proposed scales would increase the wage bill of the Company roughly by Rs. 9,210 per month. I do not think that the financial position of the Company is such as to bear such a burden. With regard to the workshop staff Mr. Kolah stated that the Company would have no objection to the introduction of the scales that have been laid down in the awards relating in the disputes between the Bombay Garage Ltd. and its workmen and the French Motor Car Co. Ltd., and its workers. In those disputes the scales were fixed by agreement of parties and they are as follows :—

(1) *Skilled Labour*—

| | | Rs. |
|---------------|-------|--------------|
| (a) Grade "A" | | 105—10—155. |
| (b) Grade "B" | | 78—5—98 E.B. |
| (c) Grade "C" | | 60—4—72. |

(2) *Assistant to Skilled Labour*—

| | | |
|---------------|-------|--------------|
| (a) Grade "A" | | 50—3—56 E.B. |
| (b) Grade "B" | | 39—3—48. |
| (c) Grade "C" | | 30—2—36 E.B. |

(3) *Unskilled Labour (Coolies)*—Rs. 30—1—33.

In the case of the French Motor Car Co. Ltd., scales were fixed in respect of some other workers not covered by the above categories and they are as follows :—

(1) *Watchman*—

| | | Rs. |
|-------------------|-------|----------|
| (a) Head Watchman | | 50—2—60. |
| (b) Watchman | | 35—1—50. |

(2) *Sepoys*—

| | | |
|-----------|-------|------------------------|
| (a) Naik | | 40—1—50. |
| (b) Peons | | 35— $\frac{1}{2}$ —40. |

(3) *Drivers*—Rs. 65—5—90—E.B.—5—100.

I think that those scales are fair and reasonable and Mr. Kolah in the course of his arguments had stated that the Company would have no objection to adopt those scales. I, therefore, direct that the Company should pay to its employees falling under the above categories according to the rates mentioned above.

As regards the office staff, the Union has, at Exhibits 20, 22 and 25, produced statements regarding the scales of salaries obtaining at present in the Ford Motor Company of India Ltd., General Motors India Ltd. and the United Motor (India) Ltd., respectively. I find that the clerical staff is divided into four grades, viz., Grade 1—Junior, Grade 2—Intermediate, Grade 3—General, and Grade 4—Senior. I direct this Company also to do accordingly.

The financial position of this Company cannot be said to be the same as that of the Ford Motors or the General Motors. I think that the scales obtaining in the United Motors (India) Ltd. would be quite fair and reasonable in the case of the employees of this Company. I, therefore, direct that the Clerical Staff in the employment of the Company should be paid at the rates given below :—

Grade 1 : Junior—Rs. 70—5—85—E.B.—5—100.

Grade 2 : Intermediate—Rs. 105—7½—135—E.B.—7½—150.

Grade 3 : General—Rs. 155—7½—170—E.B.—10—200.

Grade 4 : Senior—Rs. 205—10—225—E.B.—15—375.

These scales should come into force from 1st January 1949.

As regards the question of adjustment Mr. Trivedi at the beginning of his arguments demanded point to point adjustment. In the course of his argument, however, he stated that the method of adjustment adopted in the case of the employees of the Bombay Municipality would be acceptable to the Union. The said method was a compromise between the point to point adjustment and the method recommended by the Central Pay Commission and is fair and just. I, therefore, direct that the adjustment should be made on the lines given below :—

(a) For less than one year's service—No increment.

(b) For service of one complete year—One increment in the corresponding revised scale.

(c) For service of more than one and up to 4 years—Two increments in the corresponding revised scale.

(d) For service of more than four years—Three increments in the corresponding revised scale.

I may mention here that if any employee is at present drawing a salary higher than the one arrived at by following the aforesaid method of adjustment, he should be paid his present salary till the date he can conveniently be adjusted in the revised scale.

The difference between the salary drawn since 1st January 1949 and that payable according to the revised scales should be paid to the employees within two months from the date of the publication of this award.

6. *Demand No. 2—Dearness Allowance.*—The demand of the Union is that with effect from 1st January 1947, the employees should be paid dearness allowance on the following scales :—

(i) Employees drawing up to Rs. 100 per month as basic salary—Millowners' scale of the textile workers in Bombay or 60 per cent. of the amount representing the earnings as basic salary, whichever is higher.

(ii) Employees drawing in excess of Rs. 100 per month as basic salary—60 per cent. of first Rs. 100 and 40 per cent. on the balance of the amount of basic salary.

The Union further demands that the 60 per cent. should be based on the cost of living index figure 280 and that a change upward or downward should be met on the basis of 5 per cent. for every rise or fall of 15 points from the basic figure 280.

From August 1948, the Company has been paying its employees dearness allowance at the following scale :—

(i) For salary up to Rs. 100—55 per cent. of the basic salary, with a minimum of Rs. 32.

(ii) For salary from Rs. 101 to Rs. 150—45 per cent. of the basic salary, with a minimum of Rs. 55.

(iii) For salary from Rs. 151 to Rs. 250—35 per cent. of the basic salary, with a minimum of Rs. 68.

(iv) For salary of Rs. 251 and above—22½ per cent. of the basic salary, with a minimum of Rs. 88.

To the employees of the workshop, the Company has been paying dearness allowance at the same rate from August 1948 but no minimum is prescribed in their case as in the case of the office staff.

With regard to the demand made by the Union for an increase in the dearness allowance the Company contends that such increase would place an additional burden on the Company and that the Company would not be able to bear it. The Company further submits the existing scale of dearness allowance paid by it compares favourably with the scale prevailing in other similar concerns.

The existing scale is not linked with the cost of living index figure. Payment of dearness allowance is the most convenient method of adjusting wages to fluctuations in the value of money during periods of instability of prices, especially when such fluctuations are both frequent and considerable. The textile scheme of dearness allowance is no doubt more scientific in that it takes into account the fluctuations in the month to month cost of living. I, therefore, think that it is necessary to link the scale of dearness allowance with the cost of living index figure.

Moreover Ex. 26, which is a statement filed by the Union showing the scale of dearness allowance paid by the sister concerns in Bombay, shows that in almost all the automobile concerns in Bombay dearness allowance is paid to the workers on the basis of the scale prevailing in the

Textile Industry in Bombay. It is always desirable that there should be a uniformity in the conditions of service in different units in the same industry at one centre. A disparity between wage payments for similar kind of work by contiguous units leads to discontent and friction. I, therefore, think that there should be one scale of dearness allowance in all the units in the automobile industry in Bombay.

Coming now to the question of the capacity to pay, the capacity is certainly, as observed by the Bombay Textile Labour Inquiry Committee, not to be measured in terms of the individual establishment. The fact that other automobile concerns in Bombay have been paying to their employees dearness allowance on the textile scale is a clear indication of the capacity of the industry to pay. I do not, therefore, see any reason to make an exception in the case of this Company.

Mr. Kolah, in the course of his arguments, submitted that if the textile scale is to be applied, it should be applied in the case of all alike. I entirely agree with that view. At the same time it has to be borne in mind, that the clerical staff is drawn from what are called the middle class as distinguished from the working class. It has been well recognised that the cost of living of a middle class family is about 80 per cent. higher than that of a working class family. The scale of dearness allowance for the operatives, who come from the working class, would not be adequate for the clerks and the clerks should be given some lump sum in addition. This is exactly what has been done in the case of clerks working in the textile industry in Bombay under the award of an Industrial Tribunal (*Bombay Government Gazette Extraordinary*, Part I, dated October 28, 1948, p. 4772). I think it is fair and reasonable to apply the scale prescribed under that award to the clerical staff employed under the Company.

Under the award of the Industrial Court made on 20th February 1948, the rate of dearness allowance is fixed at 1·9 pies per day per rise of each point in the cost of living index figure over the pre-war figure 105. As all the employees of the Company are paid on monthly basis, the dearness allowance will have to be calculated on the basis of a month of the number of days of the month as working days. The amount of dearness allowance will fluctuate according to the rise or fall in the cost of living index figure. The workshop employees and the subordinate staff such as peons, watchmen, etc., attached to the Office of the Company should be paid dearness allowance at the aforesaid rate, that is, 1·9 pies per day per rise of each point in the cost of living index figure over 105.

As regards the clerical staff the scale of dearness allowance is fixed as shown below :—

- (a) Clerks with salary up to Rs. 100—Dearness allowance at the scale mentioned above plus Rs. 5.
- (b) Clerks with salary between Rs. 101 to Rs. 300—Dearness allowance at the scale mentioned above plus Rs. 10.
- (c) Clerks with salary above Rs. 300—Dearness allowance at the scale mentioned above plus Rs. 15.

The Company has revised the scale of dearness allowance from time to time, the last revision being in August 1948. The Union made a demand for further revision on 15th October 1948 and the matter was under negotiations till December 1948 when Government referred the matter for adjudication. In view of these circumstances I do not think that the demand for payment of dearness allowance at the increased rate retrospectively from 1st January 1947 is reasonable. I direct that dearness allowance at the rate fixed above should be paid from 1st January 1949. The difference payable to the employees for the period commencing from 1st January 1949 should be paid within two months from the date of the publication of this award.

7. *Demand No. 3: Gratuity.*—The Union demands a scheme of gratuity to be framed on the lines mentioned in the demand. The Company opposes the demand on the ground that the Government had no power to refer the demand to the Tribunal and consequently the reference was *ultra vires* of the Industrial Disputes Act, 1947. The Company further contends that the claim for gratuity in addition to the existing facilities of the Provident Fund and the Insurance Scheme was not only not justified but was improper and extortionate. The Company submits that the minimum period of service after which gratuity should become payable should be sufficiently long.

Mr. Kolah, the learned Counsel for the Company, argued that the demand for gratuity was not an industrial matter as payment of gratuity was never a term of employment or a condition of service. In support of this argument Mr. Kolah relied upon the judgment of Mr. Justice Subba Rao in *The Chrome Leather Co. Ltd. versus Shri C. Baktavatsalu Naidu and another*. A similar argument was advanced by the employer in the case of *The Indian Hume Pipe Company Ltd. versus B. M. Naravaty*, 48 Bom. L.R. 551 in respect of a claim for bonus put forward by the workmen. It is true that that was a case under the Trade Disputes Act, 1929, but it has to be remembered that there is no material difference between the definition of "trade dispute" as given in that Act and the definition of "industrial dispute" as given in the Industrial Disputes Act, 1947. In the course of his judgment in that case, Sir Leonard Stone, C.J., observed:—

"In my judgment as soon as the appellant Company refused to comply with this demand which it was in its unfettered discretion to grant, it is quite impossible to say that there was no dispute or difference between the employers and their workmen which was connected with the terms of employment. But even accepting that the primary meaning of the word 'bonus' is 'gift' or 'gratuity', it is not asked in this case as a matter of patronage or bounty. It is demanded, and strike action is threatened if such demand is not complied with. So that, as soon as the demand is declined, all the elements of a trade dispute arise."

A division Bench of the Madras High Court, composed of Mr. Justice Horwill and Mr. Justice Govinda Menon, who heard the appeal against the judgment of Mr. Justice Subba Rao, expressed its entire agreement

with the opinion expressed by Sir Leonard Stone, C. J., in the passage quoted above [see *C. Baktavatsalu Naydu versus The Chrome Leather Co. Ltd.* (1949) 1 F.J. R. 84]. What was said in respect of a demand for bonus would equally hold good in the case of a demand for gratuity.

It is also too late in the day for the employers to raise the contention that bonus or gratuity is an *ex-gratia* payment and that the Industrial Tribunal has no jurisdiction to make any award in that behalf. Several Industrial Tribunals in the Province of Bombay have made awards in respect of payment of gratuities. In this connection, I may also quote the observations of Mr. Justice Horwill in the case of *C. Baktavatsalu Naydu versus The Chrome Leather Co. Ltd.* In the course of his judgment in that case, His Lordship observed :—

“The granting of bonuses, gratuities, pensions and the like to employees is not out of charity. They are given in order to make labour more contented, and form part of the remuneration of the workers for their services Payments of gratuities, pensions, and provident fund may be regarded as differed wages, payable upon retirement, and affording a means, which the individual worker may be unable to do himself of putting by a little to provide for the days when he will no longer be able to work.”

There is therefore no substance in the contention that the Government had no power to make a reference and that the reference was *ultra vires* of the Industrial Disputes Act, 1917.

Mr. Kolah also argued that as a scheme for gratuity would operate beyond one year which is ordinarily the period during which an award made by an Industrial Tribunal would remain in operation, the Industrial Tribunal has no jurisdiction to go into the question of payment of gratuity. The same objection was raised on behalf of the United Motors (India) Ltd., Bombay, in the dispute between that Company and the workmen employed under it. In the course of his award in that case (*Bombay Government Gazette* Extraordinary, Part I, dated November 26, 1948, p. 5149) Mr. Justice Sen, the Industrial Tribunal, observed :—

“There is no substance in the argument regarding jurisdiction; the Industrial Tribunals have been constantly dealing with the question of, and granting, gratuity in their awards in disputes between different concerns and their employees. The question has little relevance to the period for which an award of the Industrial Tribunal may be binding. If the award ceases to be binding, not only the directions given as regards gratuity but also all other directions will cease to be binding at the same time.”

I respectfully agree with those observations. The commonest of all industrial disputes is a dispute relating to wages. When an Industrial Tribunal fixes a scale of increased wages, it is not only for the one year during which the award is to be operative but also for a period thereafter. Industrial Tribunals have considered the demand by the

workers for increased wages and have made awards in that respect. If there was any substance in the objection raised by Mr. Kolah in respect of the consideration of the demand for payment of gratuity, the same objection could and would have been raised in respect of the demand for increased wages, but no such objection has ever been raised. Further, there would be some employees who might retire or be discharged during the year during which the award would be operative and I see no reason why it should not be possible for an Industrial Tribunal to frame a scheme of gratuity for the benefit of such employees. Considering the question from all points of view I am of the opinion that there is no substance in the objection raised on behalf of the Company.

Mr. Kolah next argued that the principle of having either gratuity or pension in addition to a provident fund has no doubt been accepted in the Banks Award and in the awards relating to other industrial concerns but that in the case of the Company, there is no existence of an Insurance Scheme in addition to the provident fund and so there was no necessity to frame any scheme of gratuity. The Staff Insurance Scheme on which reliance is placed by the Company, exists not only in this Company but it also exists in other concerns like the Premier Construction Co. Ltd., Messrs. Waichandnagar Industries Ltd. etc. (see Ex. 41). The objection raised now had also been raised in the dispute between the Premier Construction Co. Ltd., and its sister concerns and their employees and has been considered by Mr. M. C. Shah, the Industrial Tribunal, in his award published at page 1179 of the *Bombay Government Gazette*, Part I, dated March 10, 1949. In the course of his award Mr. Shah observed :—

“ Mr. Kolah has objected to the grant of any gratuity whatever because the Company has a provident fund scheme with a guaranteed rate of compound interest at 6 per cent. ; and in addition a staff insurance scheme in which it contributes 16½ per cent. of the premium payable. The scheme is not however compulsory and, as I will later show, it does not confer such a benefit on the employees as it appears to do at first sight and, in my opinion, it is not sufficient to dispense with the giving of a relief by way of gratuity.”

I have myself examined the scheme carefully and I see no reason to differ from the observations of Mr. Shah quoted above. The Company has on its rolls about 150 employees out of whom only ten employees have so far taken the benefit of the Staff Insurance Scheme. It must also be noted that during the year 1946-47 the Company spent only Rs. 6-2-0 towards insurance premium contribution and during the year 1947-48 only Rs. 8-14-8. I am therefore of the opinion that the existence of the Staff Insurance Scheme does not do away with the necessity of framing a scheme for gratuity.

There is one more point which must be considered in connection with the question of gratuity. I have already stated above that in 1937 the workshop of the Company was given to one Mr. Narielwalla to run. Prior to that the Company had employed some employees to work in the work-

shop who went under Mr. Narielwalla on such transfer. There are some ten such employees still in the service of the Company. Mr. Trivedi has fairly conceded that those employees who were employed by Mr. Narielwalla between 1937 and 1944 could not be regarded as employees of the Company and that in the case of such employees their services with the Company would commence from the day on which the Company took over the workshop from Mr. Narielwalla. With regard to those employees who were in the service of the Company prior to 1937 and who on transfer went under Mr. Narielwalla's control but who have now come under the control of the Company, Mr. Trivedi contends that their service should for the purposes of gratuity be counted from the date of their joining the original organisation of the Company. The Company, however, does not appear to be willing to do so. On 3rd March 1947, the Union had by a letter to the Managing Director of the Company put forward the demand that the date of appointment in the case of the workshop employee should mean the date of their joining the original organisation of the Company as in the case of the office staff (Ex. 16). Thereafter discussions were held between the representatives of the Union and those of the Company. The arrangements and conclusions arrived at those discussions are contained in the Company's letter to the Union dated the 7th July 1947 (Ex. 17). As against this particular demand the only remark is "Agreed". The contention of the Company in that respect is that if the Union had accepted all the conclusions embodied in that letter, this agreement was to be effective and that as those conclusions had not been accepted by the Union wholly, the agreement is not binding on the Company. No such reservation is however to be found in the letter (Ex. 17) and I think the Company is taking up a rather unreasonable attitude. In *The Bombay Garage Ltd., v. The Industrial Tribunal, Bombay (Misc. Application No. 13 of 1949)* Mr. Justice Tendolkar has observed that where there was a continuity of service a new employer was bound to take into account the services rendered by the workers to his predecessor in title. In the present case the demand of the workers is more moderate than the one that was being considered in that case. I, therefore, hold that the date of appointment in the case of workshop employees should be the date when they first joined the original organisation of the Company.

It was next urged on behalf of the Company that the minimum period of service after which gratuity would become payable should be sufficiently long. If that were not so, the Company submitted, it would be an inducement to young employees to leave their jobs with the Company and join other concerns and the Company, which taught them their jobs and which they would be deserting, would be compelled to pay them gratuity. There is some force in this contention. At the same time there is the possibility of the employer's terminating the services of an employee just when he is about to complete that period of service which would entitle him to receive gratuity. I, therefore, think that while in the case of an employee voluntarily retiring or resigning from service the minimum service required for the purpose of getting

gratuity should be 15 years, in the case of employees whose services are terminated by the employer the minimum period should be completion of 5 years' service.

I have taken the financial position of the Company into consideration and I direct that gratuity should be paid to all the employees covered by this award on the scale given below:—

(1) On the death of an employee while in service of the Company or on his physical or mental disability to continue further in service—1 month's salary per each completed year of service subject to a maximum of 15 months' salary to be paid to him, his heirs, executors or nominees.

(2) On voluntary retirement or resignation of an employee after 15 years' continuous service in the Company—15 months' salary.

(3) On termination of the services of an employee by the Company—

(a) After completion of service of 5 years but less than 10 years— $\frac{1}{2}$ month's salary per every completed year of service.

(b) After 10 years continuous service in the Company, but less than 15 years— $\frac{2}{3}$ of 1 month's salary per each completed year of service.

(c) After 15 years' continuous service in the Company—15 months' salary.

(4) Gratuity will not be paid to an employee who is dismissed for dishonesty or misconduct.

8. *Demand No. 4: Leave Rules.*—Under this demand the Union has demanded separate leave rules for the office staff and the Workshop staff. The demand of the Union in respect of the office staff is as follows:—

(a) *Privilege Leave.*—

(1) One month's leave with full pay and dearness allowance after every eleven months' service.

(2) Accumulation of such leave should be permitted up to three months.

(3) Retrospective effect from 1st January 1948.

(4) Those going on leave should be paid travelling allowance amounting to one month's salary.

(5) On retirement or discharge, the employee should be paid salary for the period of leave earned but not enjoyed.

Mr. Trivedi, who appeared for the workmen, withdrew at the time of hearing the demand for travelling allowance (Exhibit 29) and so that demand need not be considered.

The Company has at Exhibit 36 produced the Circular issued by it on 30th April 1946 regarding the leave Rules for the office staff. According to that circular an employee would be entitled to one month's privilege leave with pay after 12 months' service. The rules also provide that privilege leave cannot be accumulated for a period exceeding three months. It will thus be seen that what the Union demands is already

Privilege leave

provided for under the existing leave Rules. Under these circumstances there is no substance in the demand that the demand in respect of privilege leave should be given effect to from 1st January 1948.

Privilege leave is intended to recoup the vitality and efficiency lost during the period of 12 months' service and consequently it is desirable that an employee should avail himself of the leave every year rather than allow the vitality and efficiency to suffer further by not enjoying the leave every year. I am not therefore in favour of paying salary in lieu of leave earned but not enjoyed to employees who retire or are discharged. There may however be cases where an employee though anxious to enjoy the leave earned is not able to do so on account of exigencies of work. In such cases the employer is certainly bound to pay to the employee salary for the period of leave earned but not enjoyed. Mr. Trivedi also, in the course of his arguments, agreed that the Company should be made to pay to an employee salary for the period of leave earned but not enjoyed if the Company had refused to grant leave when the employee had applied for it.

To summarise the existing rules regarding the privilege leave should continue to remain in force. The only addition I propose is that if an employee has applied for leave and the Company has refused to grant the same, such employee on retirement or discharge be paid salary for the period of leave earned but not enjoyed. I therefore direct accordingly.

(b) *Sick Leave.*—The demand in this respect is for sick leave for 15 days with pay and dearness allowance in a year. The Union further demands that such leave should be allowed to be accumulated if it is not taken in the past. It is also demanded that for an absence on account of sickness for five days or less no medical certificate need be produced by an employee and that on production of a medical certificate an employee should be allowed to avail himself of sick leave immediately after the expiry of privilege leave.

With regard to this demand the Company's contention is that in addition of privilege leave, it allows fifteen days' casual leave with pay at the discretion of the Management. The Company has no objection to set off leave on account of sickness proved by a proper medical certificate, against the casual leave of fifteen days that is available under the present rules. The Company further submits that if any sick leave is granted it should only be on condition of production of medical certificate in the event of absence exceeding one day.

The existing practice appears to be that though there is no separate provision made for leave, absence on account of illness is debited to the Casual leave account. Thus in what is termed at present as "Casual Leave" is comprised of both sick leave and Casual leave. In the Ford Motor Company of India Ltd., Bombay, the office staff is allowed fifteen days' sick leave with full pay in a year. (*Bombay Government Gazette Extraordinary, Part I, May 14, 1948, pp. 2332-2341*). In the General

Motors India Ltd., Bombay, the office staff is allowed sick leave of fifteen days for every year of service. It was argued on behalf of the Company that both these concerns were big ones as compared with the Bombay Cycle and Motor Agency. Mr. Kolah, the learned Counsel for the Company, admitted that it is desirable to have uniformity in the conditions of service in the different units in the same industry and stated that the Company would have no objection to fall in a line with the United Motors (India) Ltd., Bombay. In that concern under the Award made by the Industrial Tribunal, Mr. Justice Sen, on 28th October 1948, a member of the office staff is allowed sick leave up to ten days in a year on production of a medical certificate (*Bombay Government Gazette* Extraordinary, Part I, November 26, 1948). I think that is quite an adequate provision. Following, therefore, the award made in the case of the United Motors (India) Ltd., I direct that a member of the Office Staff should be allowed sick leave on full pay up to ten days in a year on production of a medical certificate except in the case of absence owing to sickness for one day; and that he should be allowed to accumulate such leave up to six weeks, which can be drawn upon, in cases of application for sick leave for a larger period than allowable during the year within the ten days limit, only after all the privilege leave due has been exhausted.

(c) *Casual Leave*.—The demand of the Union for fifteen days Casual leave with full pay and dearness allowance is unreasonable. In the case of the United Motors (India) Ltd., the learned Tribunal had directed that subject to the exigencies of work the Management should grant to a member of the office staff casual leave of not more than three days at a time, if it is satisfied as to the real necessity for sick leave, up to a limit of seven days in a year. I think that is quite an adequate provision and I direct accordingly.

Workshop Staff—

(a) *Privilege Leave*.—The Union demands fifteen days' privilege leave with full pay and dearness allowance with a right to accumulate such leave up to 45 days without prejudice to leave already accrued due. The Union wants that retrospective effect to this rule from 1st January 1948. There is a demand for travelling allowance and for payment of salary for the period of leave earned but not enjoyed at the time of retirement or discharge.

The Company has, by its written statement, stated that it was prepared to allow its workers such leave (privilege, sick or casual) and on such terms and conditions as is or may be allowed under the Factories Act or similar legislation for the time being in force.

The Factories Act, 1948, which came into operation from 1st April 1949, by section 79, provides that every worker who has completed a period of service of twelve months' continuous service in a factory shall be allowed during the subsequent period of twelve months leave with wages for a number of days calculated in the case of an adult at the rate of one day for every twenty days of work performed by him

Sick leave

Casual leave

during the previous period of twelve months subject to a minimum of ten days. Roughly this brings the annual leave with wages to the number of days asked for by the Union. The workmen in the United Motors (India) Ltd. are being allowed fifteen days' privilege leave with full pay and allowance with a right in proper cases to accumulate such leave up to 45 days. Under the award made on 6th January, 1949, the Industrial Tribunal (Mr. Justice Sen) has allowed the operatives in the employment of Ford Motor Company of India Ltd., Bombay, privilege leave of two weeks with full pay and dearness allowance. In that case the accumulation of such leave was allowed up to four weeks. Such an accumulation is in conformity with sub-section (2) of section 79 of the Factories Act, 1948. I, therefore, direct that each worker shall be entitled to privilege leave as per provision contained in section 79 (1) of the Factories Act, 1948. I also direct that accumulation should be allowed to the extent provided for under section 79 (2) of the Factories Act. The date for computing the beginning of the period entitling a worker to earn privilege leave will be 1st January 1948.

As to discharged employees, section 79, clause 7 of the Factories Act, 1948, provides for payment for the period of leave earned but not enjoyed the employer not having granted the same. It is but fair and reasonable that the same benefit be made available to employees on their retirement. The same benefit will not, however, be open to employees leaving the service of the Company on account of misconduct or dishonesty. I therefore direct accordingly.

(b) *Sick Leave*.—The Union demands (1) minimum of ten days' Sick leave with pay and dearness allowance in a year, (2) a right to accumulate such leave without any restriction, (3) no medical certificate for absence on account of sickness for three days or less and (4) removal of the bar against using sick leave immediately after expiration of privilege leave on submission of a medical certificate in person or by post.

The demand for ten days' sick leave in a year is in my opinion excessive. Both in the case of Ford Motor Company of India Ltd., Bombay, and the United Motors (India) Ltd., Bombay, the Industrial Tribunal has allowed seven days sick leave in a year. I think seven days' sick leave in a year with full pay is quite a reasonable provision. In order to meet cases of protracted illness, accumulation should be allowed up to 42 days. In cases of sick leave for a period longer than seven days, the employee must first exhaust the privilege leave to his credit. Sick leave should be granted on production of a medical certificate but for a temporary absence for a day on account of sickness no medical certificate is necessary. I do not think it is desirable to allow an employee to tack on sick leave to privilege leave as demanded by the Union. Such a privilege is likely to be abused. I therefore reject that portion of the demand. On this demand, I direct that the Company should grant seven days' sick leave in a year with full pay that accumulation of such leave should be allowed up to 42 days, that in case of sickness for more than seven days the employee must first

exhaust the privilege leave standing to his credit and then draw on the accumulation of sick leave and that sick leave should be granted on production of a medical certificate except in the case of absence for a day on account of sickness.

(c) *Casual Leave*.—The Union demands (1) ten days' casual leave with full pay and allowance in a year and (2) the maximum to be enjoyed at a time should be three consecutive working days. In the course of his arguments, Mr. Trivedi, who appeared for the workers, stated that the workers would be prepared for seven days' casual leave in a year with full pay and allowance. The workers must bear in mind that this form of leave is intended to meet emergencies or unforeseen difficulties and that it is not a matter of right. I think that the demand of seven days' casual leave in a year is quite reasonable. I therefore direct that subject to the exigencies of work, the Company should, on being satisfied of the real necessity for such leave, grant casual leave up to seven days in a year on full pay and allowance but in no case should such leave exceed three consecutive days at a time.

9. *Demand No. 5: Bank Holidays*.—At the hearing this demand was not pressed on behalf of the workers. The demand is therefore rejected.

10. *Demand No. 6: Overtime*.—The Union demands that work for more than Schedule hours put in by the employees should be paid at double the rate of pay. The Company's reply to this demand is that the Company is agreeable to pay to its employees overtime in excess of the hours of work prescribed in the Factories Act and the Bombay Shops and Establishment Act at the rate fixed by those Acts. The present working hours for the Office Staff are 9 a.m. to 6 p.m. on weekdays with an hour for lunch and on Saturdays the working hours are 9 a.m. to 1-30 p.m. This works out at 44½ hours per week. Section 14 of the Bombay Shops and Establishments Act, 1948, lays down that no employee shall be required to work in any shop or commercial establishment for more than nine hours in any day and forty-eight hours in a week. The present working hours are therefore less than the hours prescribed by the Bombay Shops and Establishments Act, 1948. It is no doubt true that under section 63 of the Bombay Shops and Establishments Act, 1948, an employee would be entitled to wages for overtime work if he is required to work in excess of the limit of hours of work, which in the case of shops and commercial establishments is nine hours in any day and forty-eight hours in a week. What the Act lays down is the maximum hours of work that an employer would in law be justified in making his employee work. It does not say that it would not be permissible for an employee to have shorter hours per day or per week. The employees of the Company have been working for the number of hours mentioned above and if they are required to work for longer hours they must be remunerated for that additional work. A contention similar to the one advanced by the Company had been advanced by

the Ford Motor Company of India Ltd. and was rejected by Diwan Bahadur Kamorkar (*Bombay Government Gazette* Extraordinary, Part I, dated 14th May 1948, page 2332 at page 2339). I myself have rejected the contention in my award in the dispute between Caltex (India) Ltd., Bombay, and its workmen (*Bombay Government Gazette* Extraordinary, Part I, dated 27th January 1949). In my opinion it is fair and reasonable that the Company should pay allowance for work beyond Schedule hours at the normal rate of salary. I, therefore, direct that where an employee is required by the Company to work beyond the normal hours of duty but within the limit of hours of work prescribed by the legislation he should be paid overtime allowance at his salary or wage rate subject to a minimum of allowance as for two hours. The same would be the position in respect of employees governed by the Factories Act.

The hourly rate of overtime allowance should be calculated in the following manner:—The total working hours per week should be divided by six, which represents the number of working days in the week. No account is to be taken about the holidays in the week. The quotient will give the average period of work per day in the week. This figure should be multiplied by the number of days in the particular month including Sundays and holidays. The salary or wages of the employee concerned should be divided by this product and the quotient will give the required hourly rate.

11. *Demand No. 7 : Working Hours.*—The present working hours of the Office Staff (Show Room) are as follows:—

Week days : From 9 a.m. to 6 p.m. (with a break of one hour for lunch).

Saturdays : From 9 a.m. to 1-30 p.m. (without break).

Peons are required to start work 15 minutes earlier without any compensation.

The Union demands that the said hours are very long and that they should be reduced as follows:—

Week days : From 10 a.m. to 5-30 p.m. (with a break of one hour for lunch).

Saturdays : From 10 a.m. to 1-00 p.m. (without break).

Peons to start work 15 minutes earlier.

The Company opposes the demand on the ground that the present working hours are well within the maximum period of working hours provided by the Bombay Shops and Establishments Act and that consequently there was no reason for changing the present working hours.

The Union has been agitating for a change in the working hours since the 3rd March 1947. It had then demanded that the hours of work on week days should be 9-30 a.m. to 5-30 p.m. (with one hour's interval for lunch) and on Saturdays from 9-30 a.m. to 1-00 p.m. The Company by its letter dated the 7th July 1947 informed the Union that it was not

prepared for any change. On 9th June 1948, the Union again raised the question of working hours and repeated its previous demand. The Company, on 14th/16th August 1948, sent a reply to the Union proposing that from the 1st September 1948 the Office Staff would work on week days from 9-30 a.m. to 6 p.m. with an hour's break for lunch and on Saturdays from 9-30 a.m. to 1-30 p.m. without any break. The said letter also contained Company's decision in respect of the other demand put forward by the Union. The concluding paragraph of the said letter ran as follows:—

“ The above arrangements to be in force for one year and are made without prejudice to the Company's right to withdraw, alter, modify or change the same in case the proposals are not accepted wholly by the Union.”

It seems that the proposals made by the Company were not accepted wholly by the Union and the proposed working hours which were shorter by half an hour per day were never introduced. On 15th October 1948, the Union again submitted its demands to the Company and in these demands we find that the starting time was pushed ahead by a further half an hour. As I have stated above the present working hours are shorter than those recognised by section 14 of the Bombay Shops and Establishments Act, 1948. Mr. Trivedi has produced a letter addressed to him by the General Manager, United Motors India Ltd., Bombay, giving the office hours observed by that concern. They are from 9-30 a.m. to 5-30 p.m. with an hour's break for lunch and morning and afternoon Tea on week days and from 9-30 a.m. to 1-00 p.m. on Saturdays. The working hours for the Office Staff in the employment of the Ford Motor Company of India Ltd. are 9-30 a.m. to 5-30 p.m. on week days inclusive of an hour's recess for lunch and on Saturdays from 9-30 a.m. to 1-00 p.m. It is no doubt true that it is desirable that the conditions of service in different units in an industry should be uniform. The present demand by the Union is not made on that basis but is made on the basis that the present hours are very long. I am not prepared to accept that position in the face of the provisions of the Bombay Shops and Establishments Act. I do not therefore direct any change in the hours of work. I would however recommend to the Company that it should consider the desirability of introducing the hours which it has proposed to do from 1st September 1948.

12. *Demands Nos. 8, 9 and 10.*—These demands were not pressed on behalf of the workers at the time of the hearing. No directions need therefore be given in respect thereof.

13. *Demand No. 11: Officiating Allowance.*—Under this demand the Union wants that when an employee officiates for a week or more for another employee drawing a higher salary he should be paid 50 per cent. of the difference in salary for the period of acting. In support of this demand reliance has been placed on the award made by Diwan Bahadur Kamerkar in the dispute between the Ford Motor Company of India Ltd., Bombay, and its workmen and the award made by Mr. M. C. Shah

in the dispute between the Oriental Government Security Life Assurance Co. Ltd. and its employees. The Company opposes this demand on the ground that such chances of acting in a higher post give to the experienced and lower grade staff an opportunity to gain more experience to handle responsible work. The argument advanced by the Company had been advanced on behalf of the Millowners' Association, Bombay, in the dispute between that Association and the employees in Occupation "H" in the Cotton Textile Mills at Bombay and the learned Tribunal (Mr. M. C. Shah) rejected that contention saying that if a man was considered fit enough to act in a higher post for a certain length of time it was but proper to pay a certain additional remuneration for doing the duties of that post. In my opinion it is but just and reasonable to grant acting or officiating allowance to an employee officiating in another post if it involved the assumption of duties or responsibilities of greater importance or of a different character from those attaching to his original post. If the two posts are in the same scale of pay, it cannot be said that one involved greater responsibilities than those of the original post. If the post in which an employee is called upon to officiate is in the higher grade of pay then the claim of the employee for acting allowance is perfectly justified. I therefore direct that where any employee acts in a higher post for a period of 15 days or more he should be paid an acting allowance calculated at the rate of 50 per cent. of the difference between his own salary and the salary of the person for whom he acts.

14. *Demand No. 12 : General.*—The demand is that without prejudice to anything contained in these terms nothing shall adversely affect or take away from an employee or group of employees any privilege or securities already vested in and enjoyed by such employees or group of employees. The Company had, by its written statement, contended that in the absence of any particulars as to the privileges or securities already alleged to be vested in or enjoyed by employees or group of employees, it was difficult to say anything about this demand and that the demand as framed was vague. In the course of his arguments, Mr. Kolah, the learned Counsel for the Company, stated that he would have no objection if general directions on the lines of those contained in paragraph 50 of the Banks award were given. I, therefore, direct that all existing rights, privileges, advantages, amenities and/or such other conditions of service as are already being enjoyed by the employees or group of employees and are not covered or varied by this award should remain unaffected by this award.

This the 31st day of May 1949.

P. S. BAKHLE,
Industrial Tribunal, Bombay.

Order.

No. 464/48.—Whereas the dispute between the Bombay Cycle and Motor Agency Limited, Bombay, and the workmen employed under it was referred by Government Order, Labour Department, No. 464/48, dated the 21st December 1948, for adjudication to an Industrial Tribunal;

And whereas the Industrial Tribunal has now given its award in the said dispute;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 15 read with sub-section (3) of section 19 of the Industrial Disputes Act, 1947 (XIV of 1947), the Government of Bombay is hereby pleased to declare that the said award shall be binding on the Bombay Cycle and Motor Agency Limited, Bombay, and the workmen employed under it and to direct that the said award shall come into operation on the 7th June 1949 and shall remain in operation for a period of one year.

By order of the Governor of Bombay,

C. K. MARU,

Under Secretary to Government.