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arriving at the profits or gains of the appellant which were liable to tax. Consistently enough with this attitude, the Revenue ought to have expressed its willingness to treat only a sum of Rs. 29,392-11-9 as the actual receipt of the appellant during the accounting year and made up the computation of the profits and gains of the appellant's business on that basis. The Revenue, however, did nothing of the sort and insisted upon having its pound of flesh, asking us to delete the whole of the item of Rs. 24,809 from the debit side of the account which it was certainly not entitled to do.

We accordingly allow the appeal, set aside the judgment of the High Court and answer the referred question in the affirmative. The respondent will of course pay the appellant's costs throughout.

Appeal allowed.

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May 12.

THE CENTRAL BANK OF INDIA

v.

THEIR WORKMEN

(and connected appeals)

(S. R. DAS, C. J., JAFER IMAM, S. K. DAS, K. N. WANCHOO and M. HIDAYATULLAH, JJ.)

Industrial Dispute—Bonus—Banking Companies—Bank Employees—Whether disentitled to bonus—"Remuneration" meaning of—Banking Companies (Amendment) Act, 1956 (95 of 1956), amended s. 10, whether retrospective—Banking Companies Act, 1949, (10 of 1949), s. 10.

Section 10(1)(b)(ii) of the Banking Companies Act, 1949, provided: "No banking company shall employ any person whose remuneration or part of whose remuneration takes the form . . . of a share in the profits of the company."

The dispute between the appellant Banks and their employees related, *inter alia*, to the question whether the provisions of the Banking Companies Act, 1949, prohibit the grant of bonus to bank employees. The Labour Appellate Tribunal took the view that s. 10 of the Act did not stand in the way of granting bonus to bank employees, because bonus according to it was not a share in the profits of the company. On appeal, it was contended for the appellant Banks that bonus as awarded by the Industrial Courts is remuneration within the meaning of s. 10

read with s. 2 of the Banking Companies Act, 1949, and that it was also a share in profits, and therefore, the express provisions of s. 10 read with s. 2 override the provisions of the Industrial Disputes Act, 1947, so far as banking companies are concerned, and prohibit the award of bonus to employees of Banks.

Held: (1) that the expression "shall employ any person" in s. 10 of the Banking Companies Act, 1949, means and includes "shall have in employment any person" and that in this respect the amendment of 1956, merely makes clear what was already meant by the section;

(2) that the word "remuneration" in s. 10 of the Act has been used in the widest sense and includes bonus;

(3) that bonus in the industrial sense comes out of the available surplus of profits, and when paid, it fills the gap, wholly or in part, between the living wage and the actual wage. It is labour's share in the profits, and as it is a remuneration which takes the form of a share in profits, it comes within the mischief of s. 10 of the Act;

(4) The Banking Companies (Amendment) Act, 1956, is not a declaratory Act, and except in the small matter of the expression "shall continue to employ" in sub-s. (1), it does not purport to explain any former law or declare what the law has always been. Consequently, though s. 10 as amended by the Act of 1956 does not stand in the way of the grant of industrial bonus, for the period relating to the present appeals, the amended section had no retrospective effect.

Accordingly, s. 10 of the Banking Act, prior to the amendment of 1956, prohibited the grant of industrial bonus to bank employees inasmuch as such bonus is remuneration which takes the form of a share in the profits of the banking company.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 56 to 62 of 1957.

Appeals by special leave from the judgment and order dated April 28. 1954 of the Labour Appellate Tribunal of India (Special Bench—Banks), Bombay, in Appeals Nos. 122, 129, 130, 142, 144, 145, 152, 153, 154, 155, 162, 169, 217 & 218 of 1953.

N. A. Palkhiwala, J. B. Dadachanji and *S. N. Andley*, for the appellants in C. As. Nos. 56 & 60 of 1957.

M. C. Setalvad, Attorney-General for India, J. B. Dadachanji and *S. N. Andley*, for the appellants in C. As. Nos. 57, 58, 59 & 61 of 1957.

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M. C. Setalvad, Attorney-General for India and *Naunit Lal*, for the appellant (Punjab National Bank) in C. A. No. 62 of 1957.

N. V. Phadke, T. S. Venkataraman, K. R. Sharma and *K. R. Choudhury*, for respondent No. 1 in C. A. No. 56 of 1957.

N. C. Chatterjee, Sadhan Chandra Gupta, Janardan Sharma, M. K. Ramamurthi and *M. R. K. Pillai*, for respondents in C. As. Nos. 57 to 61 of 1957 (Represented by All India Bank Employees Association)

B. P. Maheshwari, for respondent No. 3 (Association of the Punjab National Bank Employees) in C. A. No. 62 of 1957.

B.P. Maheshwari, for Surat Bank Employees Union.

B. C. Ghose, and *I. S. Sawhney*, for All India Central Bank Employees' Association.

1959. May 12. The Judgment of the Court was delivered by

S. K. Das J.

S. K. DAS J.—These are seven appeals on behalf of different Banks working in this country, some incorporated in India and some outside India. It is necessary that we should very briefly state the background of the industrial dispute which has given rise to these appeals. It is now well-known that there was a sharp rise in the prices of commodities during and after World War No. II. This rise in prices very seriously affected salaried employees belonging to the middle class including such employees in the banking industry. In or about the year 1946 trade unions of bank employees presented demands for higher salaries and allowances and better conditions of service. In some cases notices of threatened strike were also served on the employers. The unrest became particularly acute in the provinces of Bombay, the United Provinces, and Bengal as they were then known. The local Governments of those provinces referred these industrial disputes for adjudication: this resulted in some regional awards which came to be known in Bombay as the Divatia Award, in the United Provinces as the B. B. Singh

Award and in Bengal as the Gupta, Chakravarty and Sen Awards. Notwithstanding these awards, the general unrest amongst Bank employees continued and there was a clamour for control of the banking industry by the Central Government. On April 30, 1949, was passed the Industrial Disputes (Banking and Insurance Companies) Ordinance (Ordinance VI of 1949) under the provisions of which all banking companies having branches or other establishments in more than one province came under the jurisdiction of the Central Government for the purposes of the Industrial Disputes Act, 1947 (XIV of 1947). By a notification dated June 13, 1949, the Central Government constituted an *ad hoc* Tribunal consisting of Shri K. C. Sen, a retired Judge of the Bombay High Court, as Chairman, with two other persons as members to adjudicate upon an industrial dispute between several banking companies and their workmen. On the same day, the industrial dispute was referred to the Tribunal by a separate order. The dispute covered several items, and some more were added from time to time. For the sake of convenience, we shall hereafter refer to this Tribunal as the Sen Tribunal and its award as the Sen Award. After a very exhaustive enquiry, the Sen Tribunal made its award which was published on August 12, 1950. Some of the leading Banks being dissatisfied with the award applied to Supreme Court and obtained special leave to appeal against the said award, as it had been specially exempted from the jurisdiction of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950). This Court ultimately held that the award of the Sen Tribunal was void *in toto* for want of jurisdiction, but did not go into the merits of the award with regard to any of the matters dealt with therein. The consequence of this decision was that the dispute in the banking industry remained unresolved. Soon after there were some strikes consequent on certain action taken by some of the Banks. The result was that the Central Government had to take steps afresh to settle this long standing dispute. Attempts were at first made through the machinery of

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conciliation to settle the dispute, but these attempts failed. On June 26, 1951, was enacted the Industrial Disputes (Amendment and Temporary Provisions) Act, 1951 (XL of 1951) which had the effect of temporarily freezing some of the gains of labour under the Sen Award. In July 1951 the Central Government made a fresh reference to an Industrial Tribunal consisting of Shri H. V. Divatia, a retired Judge as Chairman and two other members, but the Chairman and the members resigned within a short time. On January 5, 1952, two notifications were made. By one notification a new Tribunal was constituted to be called the All India Industrial Tribunal (Bank Disputes). The Chairman of this Tribunal was Shri Panchapagesa Sastry, another retired Judge. The other two members were Shri M. L. Tannan and Shri V. L. D'Souza. Hereafter we shall refer to this Tribunal as the Sastry Tribunal. By another notification of the same date the Central Government referred the matters specified in sch. II of the notification, which were the matters in dispute between the employers and workmen of the banking companies specified in sch. I, to the Tribunal for adjudication. We need not set out here the matters specified in sch. II, but shall presently refer to those items only with which we are concerned in these appeals. The Sastry Tribunal made its award which was published on April 20, 1953. This award came up for consideration of a Special Bench of the Labour Appellate Tribunal on appeals preferred by the employees of banks all over India and of the Banks themselves. The decision of the Labour Appellate Tribunal was given on April 28, 1954. Some of the Banks moved this Court for special leave to appeal from the decision dated April 28, 1954, of the Labour Appellate Tribunal and such leave was granted on October 4, 1954. The same order which granted special leave also directed that the appeals be consolidated. These seven appeals on behalf of different Banks against their workmen have been filed in pursuance of the aforesaid leave granted by this Court.

In Civil Appeal No. 56 of 1957 in which the Imperial Bank (now substituted as the State Bank of India) is

the appellant, a preliminary objection has been taken on behalf of the respondent workmen of the Bank to the effect that the appeal is incompetent. We shall presently consider this preliminary objection, but before we do so, it will be convenient to indicate the principal questions which arise for consideration in these seven appeals.

These questions have been formulated under four heads:

(1) what is the scope of item 5 of schedule II of the notification dated January 5, 1952, the item being expressed in the following words—"Bonus, including the qualifications for eligibility and method of payment";

(2) does s. 10 of the Banking Companies Act, 1949 (prior to its amendment by Act 95 of 1956) prohibit the grant of bonus to Bank employees;

(3) whether an industrial tribunal is entitled in law to compel Banks to disclose "secret reserves" and "other necessary provisions" made by them, for the purpose of adjudication;

(4) whether the Full Bench formula laid down by the Labour Appellate Tribunal in *Mill Owners' Association, Bombay* v. *Rashtriya Mill Mazdoor Sangh, Bombay* (1) for the payment of bonus to employees in the textile industry is applicable to Banks.

Of the aforesaid four questions, the first two directly fall for decision in the appeals before us. For reasons which we shall presently give, we consider that questions (3) and (4) do not call for any decision at the present stage.

We shall now state how the Sastry Tribunal and the Labour Appellate Tribunal dealt with the first two questions. We have stated that item 5 of sch. II of the notification dated January 5, 1952, referred to the claim of bonus by Bank employees. We have also quoted earlier the words in which item 5 was expressed. The Banks contended before the Sastry Tribunal that the dispute referred to in item 5 did not contemplate the determination of the quantum of bonus payable by

(1) [1952] L.A.C. 433.

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any of the Banks for any particular year, but the item merely referred to the question of bonus in general with special reference to qualifications for eligibility and method of payment. This contention of the Banks was upheld by the Sastry Tribunal which said:

> "The primary duty is on the Government to be satisfied subjectively whether a reference should be made or not. In the circumstances aforesaid, we hesitate to hold that we are concerned with the question of quantum of benefits for particular banks and for particular years in the past in the light of profits of such banks during those periods. We ruled out a request that evidence should be taken for determination of the question. It may yet be open to the concerned parties where there is a real grievance to approach the Government to get a suitable reference for the future as well as for the account years 1949, 1950 and 1951."

What the Sastry Tribunal did was to consider the question whether there could be a bonus scheme for future years and whether it should be made to apply retrospectively to all Banks and for all years; and as to the guiding principles for the ascertainment of bonus, the Sastry Tribunal suggested certain lines of approach and recommended them for the earnest consideration of both the parties. The Labour Appellate Tribunal, however, came to a different conclusion with regard to the scope of item 5 and held that it embraced the claims to bonus for the relevant years. Accordingly, it said:—

> "It follows, therefore, that the claims to bonus made for the relevent years have not yet been adjudicated upon and that the terms of the reference have not been exhausted. The *ad hoc* Tribunal to which this reference was made is no longer in existence and some other Tribunal will have to decide what bonus, if any, is payable by the Banks to its employees for the relevant years."

The correctness of this part of the judgment of the Labour Appellate Tribunal has been seriously contested before us on behalf of the appellants and this is the first question which we have to decide.

On the second question, namely as to the interpretation of s. 10 of the Banking Companies Act, 1949 (prior to its amendment in 1950) there was again a difference between the Sastry Tribunal and the Labour Appellate Tribunal. The Chairman of the Sastry Tribunal was of the view that s. 10 of the Banking Companies Act, 1949, did not stand in the way of a grant of bonus to Bank employees, but the other members of the Sastry Tribunal apparently felt that the matter was not free from doubt and the Tribunal as a whole recommended to Government that the alleged legal difficulty by reason of s. 10 of the Banking Companies Act, 1949, should be removed by suitable legislation. Perhaps, it was as a result of this recommendation that s. 10 of the Banking Companies Act, 1949, was amended in 1956. The Labour Appellate Tribunal, however, by a majority of 2 to 1 came to the conclusion that s. 10 was no bar to a claim for bonus by Bank employees. One member of the Appellate Tribunal, Shri D.E. Reuben, recorded a note of dissent in which he held that by reason of s. 10 of the Banking Companies Act, 1949, as it stood at the relevant time, the Industrial Courts could not grant bonus to the workmen of a Bank. On behalf of the appellants it has been contended that the view of the majority of the Labour Appellate Tribunal with regard to s. 10 of the Banking Companies Act, 1949, is not correct. This is the second question for our decision. As we are not deciding the other two questions, no useful purpose will be served by setting out the findings of the Tribunals below with regard to them.

We now proceed to consider the preliminary objection taken on behalf of the respondent workmen in Civil Appeal No. 56 of 1957. Some more facts must be stated with reference to this preliminary objection. After the decision of the Labour Appellate Tribunal and before it could be implemented, several Banks appealed to Government to set aside the decision of the Labour Appellate Tribunal as they felt that the total burden imposed by it was entirely beyond their capacity to bear. Therefore, the Reserve Bank of India, under directions of the Central Government,

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carried out a rapid survey of the possible effect of the decision of the Labour Appellate Tribunal on the working of a few typical banks which were parties to the dispute. On a study of the evidence so collected, the Central Government concluded that it was inexpedient on public grounds to give effect to parts of the decision. Consequently, the Labour Appellate Tribunal's decision was modified by them by an order dated August 24, 1954. This decision was debated in Parliament and ultimately Government announced their decision to appoint a Commission (known as Bank Award Commission) to help them assess more fully the effect of the award. The Commission submitted its report on July 25, 1955, and with regard to the claim for bonus it said:

> "In regard to the claim for bonus, no general principles can be invoked and the case of each individual bank would have to be considered on its merits. Since this dispute has not been resolved so far, it is likely that it may have to be dealt with in the near future. The claim for bonus is not within the terms of my reference and I do not wish to trespass in the area of this dispute. I am, however, referring incidentally to this aspect of the matter because the fixation of a wage structure is likely to have an effect on employees' claim for bonus." (see paragraph 51 at page 34 of the Commission's report).

Thereafter, the Industrial Disputes (Banking Companies) Decision Act, 1955 (XLI of 1955) was passed to provide for the modification of the decision of the Labour Appellate Tribunal in accordance with the recommendations of the Commission. This Act in so far as it is relevant for our purpose said in s. 3 thereof that the decision of the Labour Appellate Tribunal shall have effect as if the modifications recommended in Ch. XI of the report of the Commission dated July 25, 1955, had actually been made therein and the appellate decision as so modified shall be the decision of the Appellate Tribunal within the meaning of the Industrial Disputes (Appellate Tribunal) Act, 1950 and the award shall have effect accordingly. It is clear that the Commission did not make any recommendation in

respect of the bonus claim and the Industrial Disputes (Banking Companies) Decision Act, 1955, does not affect the present appeals; that Act merely gave effect to the modifications recommended by the Commission, but did not give the decision of the Labour Appellate Tribunal any higher sanctity as a statutory enactment. Now, the preliminary objection taken on behalf of the respondent workmen is that the decision of the Labour Appellate Tribunal merely says that the claims to bonus for the relevant years have not been adjudicated and therefore the terms of the reference have not been fully worked out; it is contended that this means that some other Tribunal will have to decide what bonus, if any, is payable by the Banks to their employees, and no such Tribunal having been so long appointed, there is at the present stage no enforceable award within the meaning of the Industrial Disputes Act 1947, and the appeal accordingly is premature and incompetent. We are unable to accept this contention as correct. On behalf of the appellant Banks it has been submitted that the Labour Appellate Tribunal misconceived the scope of item 5 of sch. II of the relevant notification and on that misconception it came to the conclusion that the terms of reference had not been exhausted, a conclusion the correctness of which the appellants are entitled to challenge by way of appeal or else they will be bound by the decision that the reference is still pending and can be worked out by another Tribunal. This submission we think is correct. In the Industrial Disputes Act, 1947, an 'award' means an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto. The dispute between the parties in the present case related to bonus: on behalf of the banks it was contended (a) that item 5 of sch. II did not include claims of bonus for particular years in respect of particular banks but related to a general scheme of bonus including qualifications for eligibility and method of payment, and (b) that even a general scheme of bonus could not be made by reason of the provisions of s. 10 of the Banking

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Companies Act, 1949; on behalf of the Bank employees it was contended that (a) item 5 included claims for bonus for particular years in respect of particular banks and (b) s. 10 of the Banking Companies Act, 1949, did not stand in the way of such claims. These rival contentions led to an industrial dispute which the Labour Appellate Tribunal determined by its decision dated April 28, 1954. We do not see why that decision is not an 'award' within the meaning of the Industrial Disputes Act, 1947. In our opinion, in no sense can the appeals be said to be premature or incompetent. It is worthy of note that these appeals have been filed in pursuance of special leave granted by this Court under Art. 136 of the Constitution. That Article enables this Court to grant, in its discretion, special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. The powers of this Court under the said Article are wide and are subject to such considerations only as this Court has laid down for itself for the exercise of its discretion. The argument before us is not that these appeals do not come within those considerations and special leave should not have been granted; but the argument is that they are incompetent for other reasons. Even those reasons, we think, are not sound. Learned counsel for the respondent workmen has cited before us some decisions, one Australian (*In re the Judiciary Acts, etc.* (1)); and another American (*David Muskrat* v. *United States* (2)) in support of his contention. We consider, however, that the point is so clear and beyond doubt that it is unnecessary to embark on an examination of decisions which relate to entirely different facts. There is, in our opinion, no substance in the preliminary objection which must be overruled.

Now, we proceed to consider the true scope of item 5 of sch. II of the notification dated January 5, 1952. Schedule II of the notification dated June 13, 1949, by which a reference was made to the Sen Tribunal contained an identical item which was item 6. That

(1) (1921) 29 C.L.R. 257. (2) (1910) 219 U.S. 346; 55 L. Ed. 246.

item was expressed exactly in the same words as item 5 of sch. II of the notification under our consideration. The Sen Tribunal dealt with the scope of that item and said that a large number of demands had been made by the unions for bonus for particular years in respect of particular banks. The Sen Tribunal then said :—

> "We have been unable to deal with such individual demands, except such matters as were pending in the different States at the time of our appointment and have been specifically referred to us under the provisions of s. 5 of Ordinance VI of 1949 or Act LIV of 1949. Apart from the great deal of time that we should have to spend on such questions, had we to hear and dispose of every application for a particular year in respect of a particular bank, we believe that the kind of disputes regarding bonus that have been referred to us are disputes of a general nature, e.g., questions regarding 'qualifications for eligibility and method of payment'."

Thus it is clear that the Sen Tribunal also understood the item as a reference of a dispute of a general nature which did not include demands for bonus for particular years in respect of particular banks. The Central Government which made the reference to the Sastry Tribunal by the notification dated January 5, 1952, had before it the interpretation which the Sen Tribunal had made in respect of the self-same item. Having that interpretation before it, the Central Government used identical language to express the dispute which it referred to the Sastry Tribunal in item 5 of sch. II. This, in our opinion, clearly shows that item 5 of sch. II of the notification relating to the Sastry Tribunal has the same meaning as item 6 of sch. II of the notification relating to the Sen Tribunal as interpreted by that Tribunal. The various items in sch. II of the relevant notification are not items in legislative lists, but are items in an administrative order and it would not be right to apply the same canon of interpretation to the items in an administrative order as is applied to items in a legislative list. It is worthy of note that some of the items in

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the Sen reference were modified when the subsequent reference was made to Sastry Tribunal. Item 38 of the Sen reference read as follows :—

"In what manner and to what extent do the decisions of the Tribunal require modification in the case of employees of banks in liquidation or moratorium ?"

This item was dealt with by the Sen Tribunal at pp. 157 to 160 of its award and it pointed out certain defects in the wording of the item. When a similar item wss referred to the Sastry Tribunal, necessary changes were made in the wording of the item to remove the defects pointed out by the Sen Tribunal (see item 11 of sch. II of the notification relating to the Sastry Tribunal). Another example of a similar character is item 5 of sch. II of the Sen reference, an item which related to "other allowances" payable to bank employees including conveyance allowance for clerks for journeys to and from the clearing house. A point taken before the Sen Tribunal was that by conveyance allowance was meant an allowance for journeys to and from the place of work. The Sen Tribunal confined conveyance allowance to expenditure incurred for going out on the Bank's work while the Bank employee was on duty. The scope of the reference was made clearer by changing the phraseology of the item when the subsequent reference to the Sastry Tribunal was made; see in this connection the phraseology of item 28 of sch. II of the notification relating to the Sastry Tribunal. It would thus appear that we have two kinds of examples: (1) in some cases the phraseology of the items is changed when the subsequent reference is made taking into consideration the criticisms made by the Sen Tribunal and (2) there are other cases where no change in phraseology is made even though the Sen Tribunal has understood a particular item in a particular sense. Judged in the light of these examples, it seems to us that the true scope of item 5 of sch. II is what the Sastry Tribunal understood it to be, namely, whether bonus was payable to Bank employees and, if so, what were the qualifications for eligibility and method of

payment. The reference in item 5 of schedule II did not include within itself claims of bonus for particular years in respect of particular banks. The Sastry Tribunal further pointed out that there were specific references with regard to the claims for bonus in respect of some Banks. Those references did not, however, come within item 5 of sch. II. If they did, it was completely unnecessary to make separate and specific references with regard to such claims. Item 5 was not the only item which raised a general question. There were many other items of a similar nature, such as items 3, 6, 9 etc.

The Labour Appellate Tribunal itself realised the difficulty of deciding under item 5 of sch. II the particular claims for bonus for particular years. The Sastry Tribunal pointed out that there were 129 banks before it and no evidence was given to substantiate the claims for bonus for particular years in respect of particular banks. The Sastry Tribunal said:—

> "We cannot assume that for all these 129 banks before us and for all these years there were live disputes about this matter which the Government had considered fit and proper to be referred to us after applying their minds to the problem whether such a reference should be made to an industrial tribunal. There is also this additional circumstance that there had been two special and specific references by the Government in relation to the payment of bonus by the Central Bank of India, the Allahabad Bank and the United Commercial Bank for the years 1950 and 1951. Moreover, even apart from the general character of the various heads of disputes in the reference to us, individual cases pertaining only to some banks wherever the Government wanted to make such a reference have been particularised and set out, e.g., absorption of Bharat Bank employees—item 31 in schedule II of the notification. . . . It may be mentioned that the claim before us in connection with the bonus payable by the Imperial Bank of India for the years 1948, 1949, 1950 and 1951 would involve a payment of very nearly a crore of rupees over and above the

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payments already made for these years. It is not possible for us to affirm what the attitude of the Government would have been on the question of referring a dispute of this character to us under s. 10 of the Industrial Disputes Act, 1947."

Faced with the difficulty referred to by the Sastry Tribunal, the Labour Appellate Tribunal also said that it could not deal with individual claims for bonus in the present proceedings. The Labour Appellate Tribunal said that it would be acting in vacuo if it attempted to decide individual claims for bonus without having before it specific cases of bonus, particularly when there were no materials on the record on which the Tribunal could make a decision as to the quantum of bonus payable by a particular bank for a particular year. This difficulty instead of leading the Labour Appellate Tribunal to give a proper interpretation to the true scope of item 5 of sch. II led it to the conclusion that item 5 of sch. II embraced within itself individual claims for bonus for particular years and those claims must be dealt with by another tribunal on the footing that the reference had not been completely worked out. We consider this to be a complete *non sequitur*. Item 5 of sch. II must be interpreted as an item in an order of reference in the context in which the item has been used, the words in which it has been expressed and against the background in which the dispute has arisen. The practical difficulty which may arise in deciding individual claims for bonus in respect of particular banks is merely a circumstance to be taken into consideration. It cannot be decisive on the question of determining the true scope and effect of item 5 of sch. II.

On a consideration of all relevant circumstances and having regard to the context and the words in which item 5 of sch. II has been expressed, we are of the view that the Labour Appellate Tribunal was wrong in its conclusion that the reference had not been worked out and that individual claims for bonus in respect of particular banks must be determined by another tribunal on the basis of the reference made in 1952.

We now proceed to a consideration of the more important question, as to the effect of s. 10 of the Banking Companies Act, 1949. We have stated earlier that s. 10 of the Banking Companies Act, 1949, hereinafter called the Banking Act, was amended in 1956. We shall first read the unamended section, the provisions whereof were in force at the time relevant to these appeals. We shall later read also the amended section in connection with an argument presented on behalf of the Bank employees that the Banking Companies (Amendment) Act, 1956 (XCV of 1956) was not remedial in nature but was declaratory of the law as it always was.

Section 10 of the Banking Act prior to its amendment in 1956, was in these terms—

"S. 10. (1) No banking Company—

(a) shall employ or be managed by a managing agent or,

(b) shall employ any person—

(i) who is or at any time has been adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is or has been convicted by a criminal court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company; or

(iii) whose remuneration is, according to the normal standards prevailing in banking business, on a scale disproportionate to the resources of the Company; or

(c) shall be managed by any person:—

(i) who is a director of any other company, not being a subsidiary company of the banking company; or

(ii) who is engaged in any other business or vocation; or

(iii) who has a contract with the company for its management for a period exceeding five years at any one time:

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Provided that the said period of five years shall in relation to contracts subsisting on the 1st day of July, 1944, be computed from that date:

Provided further that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors so decide.

(2) If any question arises in any particular case whether the remuneration is, according to the normal standards prevailing in banking business, on a scale disproportionate to the resources of the company for the purpose of sub-clause (iii) of clause (b) of sub-section (1), the decision of the Reserve Bank thereon shall be final for all purposes."

Before we proceed to a consideration of the construction of the section, a little history may not be out of place. The Companies (Amendment) Act, 1936 introduced a new Part XA in the Indian Companies Act, 1913 (VII of 1913). Part XA contained certain special provisions applicable to banking companies only. The section with which we are concerned was s. 277HH, and that section was introduced by an amending Act of 1944. It was the precursor of s. 10 of the Banking Act and it may, perhaps, be advisable to read s. 277HH in so far as it is relevant for our purpose:

"277HH. No banking company ..... shall, after the expiry of two years from the commencement of the Indian Companies (Amendment) Act, 1944, employ or be managed by a managing agent, or any person whose remuneration or part of whose remuneration takes the form of commission or a share in the profits of the company, or any person having a contract with the company for its management for a period exceeding five years at any one time;

Provided that the period of five years shall, for the purposes of this section, be computed from the date on which this section comes into force;

Provided further that any such contract may be be renewed or extended for a further period not exceeding five years at a time if and so often as the directors think fit."

Obviously, the most undesirable feature in the structure and management of banking companies which the section tried to remedy was the appointment of managing directors or managers on long term contracts on payment of remuneration by commission or a share in the profits. However, the section was not confined to a managing agent or manager only, though by a reference to the statement of objects and reasons in relation to the amendment of 1944 it was suggested on behalf of the respondents that the section was so confined. The statement of objects and reasons is not admissible, however, for construing the section ; far less can it control the actual words used. The section in express terms said that 'no banking company . . . . shall employ any person whose remuneration or part of whose remuneration takes the form of . . . a share in the profits of the company'.

Then, in 1949 came the Banking Act. As its long title and preamble indicate, it is an Act to consolidate and amend the law relating to banking companies. It repealed the whole of Part XA of the Indian Companies Act, 1913 including s. 277HH referred to above, but s. 2 said :

"S. 2. The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Indian Companies Act, 1913, and any other law for the time being in force."

The Indian Companies Act, 1913 itself stood repealed by the Indian Companies Act, 1956 (I of 1956).

We now come back to s. 10, the proper interpretation of which is the immediate problem before us. Shorn of all such details as are unnecessary for our purpose, the section says that no banking company shall employ any person, whose remuneration or part of whose remuneration takes the form of a share in the profits of the company. The section opens with a negative,

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and says that no banking company shall employ any person; the expression 'any person' is followed by the adjectival clause descriptive of the person who shall not be employed. The adjectival clause says that the person, who shall not be employed, is one whose remuneration or part of whose remuneration takes the form of a share in the profits of the company. Two questions at once confront us: (1) is 'bonus' remuneration; and (2) is it a share in the profits of the company. The argument on behalf of the appellant Banks is that 'bonus' as awarded by Industrial Courts is remuneration within the meaning of s. 10 and it is also a share in profits; therefore, the express provisions of s. 10 read with s. 2 of the Banking Act override the provisions of the Industrial Disputes Act, 1947 so far as banking companies are concerned, and prohibit the award of bonus to employees of Banks. On behalf of the Bank employees the argument is that bonus as awarded by Industrial Courts is not 'remuneration' within the meaning of s. 10 of the Banking Act, nor is it a share in profits in its true nature. The argument on both sides hinges on the two key expressions: 'remuneration' and 'share in profits'. The meaning of these expressions we shall consider in some detail. But it is convenient at this stage to get rid of some minor points.

Section 10 in its operative part says that 'no banking company shall employ any person etc.' The amendment of 1956 says that '*no banking company shall employ or continue the employment of any person*'. The question has been mooted before us if the expression 'shall employ' means and includes, prior to the amendment of 1956, 'shall continue the employment of'. We think it does; otherwise the very purpose of the section is defeated. Take, for example, the case of an insolvent. The section says that no banking company shall employ any person who is or at any time has been adjudicated insolvent. Suppose that at the time the bank employs a person, he has not incurred any of the disqualifications mentioned in s. 10; but subsequently, there is an order of adjudication against him and he is adjudicated an insolvent. The section

obviously means that such a person can no longer be employed by the bank. If subsequent disqualification is not within the mischief of the section, then the very purpose of the section which must be the safety and well-being of the bank will be rendered nugatory. We must, therefore, hold that the expression 'shall employ a person' in s. 10 means and includes 'shall have in employment' and in this respect the amendment of 1956 merely makes clear what was already meant by the section.

We may also dispose of here an argument based on s. 2. When an industrial dispute as to bonus between an employer and his workmen is referred to a tribunal for adjudication, the tribunal has the power to resolve the dispute by an award. Such an award may grant bonus to workmen, if certain conditions are fulfilled. The argument before us is that the provisions of the Banking Act are not to be interpreted in derogation of the provisions of the Industrial Disputes Act, 1947, but in addition thereto. This argument, however, ignores an essential qualification embodied in s. 2—namely, the qualification in the clause 'save as hereinafter expressly provided'. If s. 10 expressly provides that no banking company shall employ a person whose remuneration or part of whose remuneration takes the form of a share in profits, and 'bonus' is both remuneration and a share in profits, then s. 2 can be of no assistance to the respondents. The express provisions of s. 10 must then override any other law for the time being in force, so far as banking companies are concerned.

This brings us back to the two key expressions 'remuneration' and 'share in profits'. We take the expression 'remuneration' first. The dictionary meaning of the word is 'reward, recompense, pay for service rendered' (see the Concise Oxford Dictionary); and that is the ordinary meaning of the word. The word was judicially noticed in a very early decision (*R.* v. *Postmaster General* (1); and on appeal (2); Blackburn, J., said: "I think the word 'remuneration'.....means a *quid pro quo*. If a man gives his services, whatever consideration he gets for giving his services seems to

(1) (1876) 1 Q.B.D. 658. (2) (1878) 3 Q.B.D. 428.

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me a remuneration for them. Consequently, I think if a person was in receipt of a payment, or in receipt of a percentage, or any kind of payment which would not be an actual money payment, the amount he would receive annually in respect of this would be remuneration." The word was again noticed in several English decisions in connection with s. 13 of the Workmen's Compensation Act, 1906, which enacted that a workman did not include a person employed otherwise than by way of manual labour whose "remuneration" exceeded £50; and in *Skiles* v. *Blue Anchor Line, Ltd.*(1) it was observed that remuneration was not the same thing as salary or cash payment by the employer but involved the same considerations as earnings. This was a case in which the purser of a ship received, in addition to his regular wages, at the end of each voyage, at a fixed rate per month, a bonus or extra wages; he also made a profit by the sale on board ship of whisky in nips. The majority of Judges held that both the bonus and the profit on the whisky ought to be taken into account in estimating the purser's remuneration. In an earlier decision, *Penn* v. *Spiers and Pond, Limited*(2), the gratuities and tips which the deceased workmen, employed as a waiter on a restaurant car, received from passengers using the restaurant car were held to be 'earnings in the employment of the same employer'. The decision in *Penn* v. *Spiers and Pond, Limited* (supra)(2) was approved by the House of Lords in *Great Western Railway* v. *Helps*(3). In his speech Lord Dunedin repelled the argument addressed for the appellants of that case that the meaning of the expression "earnings" should be limited to what the workman gets from direct contract from his employer by saying that the simple answer to the argument was that the statute did not say so; it used the general term 'earnings' (in our case the general term 'remuneration') instead of the term "wages" or the expression "what he gets from his employer". It is, we think, unnecessary to multiply decisions. In a recent Australian decision, *Conally* v. *Victorian Railways*

(1) [1911] 1 K.B. 360. (2) [1908] 1 K.B. 766.
(3) [1918] A.C. 141.

Commissioners (1) the matter has been tersely put as follows: "It (the word remuneration) should be given its natural meaning unless there is reason to do otherwise." This is a salutary rule of construction and should, we think, be adopted in the present case.

Is there anything in the Banking Act to give the word 'remuneration' a restricted meaning? Three meanings have been canvassed before us. The widest meaning for which the learned Attorney-General appearing for some of the banks has contended is the natural meaning of the word 'remuneration' in the sense of any recompense for services rendered, whether the payment is voluntary or under a legal obligation. The second meaning, which is intermediate between the widest and the narrowest, is that it means what is payable under any legal obligation, whether under a contract, statute, or an award. The narrowest meaning for which Shri N.C. Chatterjee, learned counsel for the respondent workmen, has canvassed is that remuneration in s. 10 of the Banking Act means contractual wages, viz., what is payable under the terms of the contract of employment only. He has put his argument in the following way: section 10, when it says that 'no banking company shall employ a person etc.', refers to the contractual relationship of employer and employee created by an act of parties, and its purpose is to put a ban on one kind of employment of a person who is to be paid a particular remuneration under the terms of his employment. It is stated that the prohibition is against any remuneration in the nature of profit sharing being fixed under a contract of service between the bank and its employees and it is contended that the legislature made the prohibition dependent on the terms of employment. It is submitted that the adjudication of an industrial tribunal in awarding bonus does not create any obligation by act of parties, and even if it imports some kind of implied term, it is *de hors* the contract of employment and is the result of a judicial verdict under the industrial law.

The argument is attractive but does not in our opinion stand the test of close scrutiny. Let us look a

(1) (1957) V.R. 466 (also 1957 Australian Law Reports 1097).

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little more closely to s. 10 of the Banking Act. It says *inter alia* that no banking company shall employ or be managed by a managing agent or shall employ a person who is or has been convicted by a criminal court of an offence involving moral turpitude etc; see cl. (b)(i). It is obvious that when the section says 'shall employ', it means 'shall have in the employment of'. It is not suggested that the disqualifications mentioned in cl. (b) (i) refer only to the contract of employment. If that were so, the section would hardly serve the purpose for which it must have been meant. We may take another example which brings out the meaning of the section even more clearly. Let us suppose that the Bank employs a manager on a contract of service which makes no mention of bonus or commission. On the argument of learned counsel for the respondents, s. 10 does not stand in the way of the bank to pay voluntarily and *ex gratia* any amount to the manager by way of commission or bonus, as long as the contract of service does not contain any term as to such payment. This, in our opinion, makes nonsense of the section. Learned counsel for the respondents had himself suggested in the course of his arguments that having regard to the legislative history of the enactment, the section was intended to prevent banks from having managers, by whatever name they might be called, who were paid by commission or a share in the profits; and yet the Bank can make such payment if it adopts the subterfuge of not saying anything about such payment in the contract of service.

There are, in our view, clear indications in the section itself that the word 'remuneration' has been used in the widest sense. Firstly, cl. (b) (iii) also uses the word remuneration. It says—"whose remuneration is, according to normal standards prevailing in banking business, on a scale disproportionate to the resources of the company". Sub-section (2)—unamended—states *inter alia* that if any question arises in any particular case whether the remuneration is according to the normal standards prevailing in banking business on a scale disproportionate to the resources of the company etc., the decision of the Reserve Bank

shall be final. It is clear that in cl. (b) (iii) of sub-s. (1) and also in sub-s. (2), the word remuneration has been used in the widest sense. We may invite attention in this connection to r. 5 of the Banking Companies Rules, 1949 (which are statutory rules) which requires a banking company to send periodically to the principal office of the Reserve Bank a statement in Form I showing the remuneration paid during the previous calendar year to officers of the company etc. Form I has a footnote which says: "Remuneration includes salary, house allowance, dearness allowance, ... bonus . . . fees and allowances to directors etc." We do not say that a statutory rule can enlarge the meaning of s. 10; if a rule goes beyond what the section contemplates, the rule must yield to the statute. We have, however, pointed out earlier that s. 10 itself uses the word 'remuneration' in the widest sense, and r. 5 and Form I are to that extent in consonance with the section.

Shri Phadke appearing for some of the respondents has urged a somewhat different contention. He has argued that assuming that the word 'remuneration' has been used in the widest sense in s. 10 and therefore includes bonus, r. 5 and Form I, show that payment of bonus is permissible: this is intelligible only on the footing that the provisions of s. 10 are restricted in their application to such employees of a banking company as are employed in a managerial or administrative capacity; they do not apply to 'workmen' as defined in the Industrial Disputes Act, 1947. We find it difficult to accept this argument. The section says that 'no banking company shall employ *any person*', and we do not see how the expression 'any person' can be restricted to those on the managerial or administrative staff only. We cannot arbitrarily cut down the amplitude of an expression used by the legislature.

It is necessary to refer here to the decision in *Wrottesley* v. *Regent Street Florida Restaurant* (1) on which learned counsel for the respondent workmen has placed great reliance. It is necessary to refer to the

(1) [1951] 2 K.B. 277.

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facts of the case, which are stated in the headnote. The waiters employed at an unlicensed restaurant, by an oral agreement amongst themselves and between them and their employers, paid into a pool all the tips received by them during the course of their employment. The tips were placed in a locked box, and the contents were distributed weekly in shares calculated in accordance with the agreement. The total weekly sum received by each waiter including the share of the tips exceeded, but the weekly wage paid by the employers was itself less than, the minimum wage prescribed by the Wages Regulations (Unlicensed Place of Refreshment) Order, 1949. The proprietors of the restaurant were prosecuted for failing to pay the minimum wage. It was held that the sums paid from the pool were not remuneration, and the earlier decisions relating to the calculation of the earnings of a waiter in connection with the Workmen's Compensation Acts were distinguished. Lord Goddard, C.J., thus explained the distinction :

> " The amount of a man's earnings in an employment and the amount of remuneration which his employer pays to him are not necessarily the same thing. The section creating the offence, and under which the proceedings are taken, is s. 9, sub-s. 2, of the Catering Wages Act, 1943. That section provides that, if an employer fails to pay to a worker to whom a wages regulation order applies remuneration not less than the statutory minimum remuneration clear of all deductions, he shall be guilty of an offence. Section 10 contains somewhat elaborate provisions for the computation of remuneration. Not only the short title but the structure of the Act —setting up a wages commission, permitting the establishment of wages boards, and providing for wage regulation orders—clearly indicates that it is with wages that the Act is intended to deal. The use of the word " remuneration " in both s. 9 and s. 10 and, indeed, in other sections, is probably because there are certain deductions from wages which are authorized by s. 10, so that remuneration is an apt word to indicate the net payment.

> What we have to decide is whether, when a waiter, receives a payment from the tronc in the manner found in the case, that sum can be regarded as remuneration paid to him by, or as remuneration obtained by him in cash from, his employer. In our opinion, when a customer gives a tip to a waiter the money becomes the property of the latter."

We think that the decision itself shows that the word 'remuneration' must be given its meaning with reference to the context in which the word occurs in the statute. In the context of the Catering Wages Act, 1943, it meant the net payment after certain deductions from wages paid by the employer; and in the Workmen's Compensation Acts, it meant the amount of a man's earnings in an employment. We have pointed out that in the Banking Act with which we are concerned, the word 'remuneration' has been used in the widest sense. In that sense, it undoubtedly includes bonus.

We proceed now to a consideration of the second key expression for our purpose, viz., 'takes the form of a share in the profits of the company'. The conception of industrial bonus (that is, profit bonus claimed by employees and granted amicably, through conciliation or as a result of an industrial award) has had a chequered development. In some of the earlier Bombay decisions of Industrial Adjudicators, it was held that the grant of bonus was entirely a matter of grace and not of right; some decisions characterized bonus as a gift, a sort of bakshis or *pour-boire* (see D. G. Damle's Labour Adjudications in India. p. 408). By 1948, however, the conception had crystallised, and it was judicially recognised that the claim of profit bonus could not any longer be regarded as an *ex gratia* payment. In *Millowner's Association, Bombay* v. *Rashtriya Mill Mazdoor Sangh Bombay* (1) the Full Bench of the Labour Appellate Tribunal evolved the formula for determining the quantum of bonus, and the general principles governing the claim of bonus were also laid down. These are: (1) as both capital

(1) 1950 L.L.J. 124.

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and labour contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges; (2) the claim of bonus would only arise if there should be a residue after making provision for (a) prior charges and (b) a fair return on paid up capital and on reserves employed as working capital; and (3) bonus is a temporary satisfaction, wholly or in part, of the needs of the employee where the capacity of the industry varies or is expected to vary from year to year, so that the industry cannot afford to pay 'living wages'. The Labour Appellate Tribunal recognised that where the goal of living wages had been attained, bonus like profit sharing in the technical, narrow sense would represent more the cash incentive to greater efficiency and production. The conception of the living wage itself is a growing conception, and the goal has been reached in very few industries, if any, in this conntry. The general principles laid down by the aforesaid Full Bench decision of the Labour Appellate Tribunal were generally approved by this Court in *Muir Mills Co. Ltd.* v. *Suti Mills Mazdoor Union, Kanpur* (1), and have been fully considered again and approved in *Civil Appeals Nos. 459 and 460 of 1957* (*Associated Cements*) in which judgment was delivered on May 5, 1959.

We have to consider the expression 'takes the form of a share in the profits of the company' in the context of the meaning of the word 'bonus' as explained above. It is necessary to state that we are not considering here the question of production bonus or Puja bonus, which may not necessarily come out of profits and these stand on a different footing. There can be now no doubt, however, that profit bonus, in the industrial sense in which we now understand it, is a share in the profits of the company; it is labour's share of the contribution which it has made in the earning of the profits. The two grounds on which it has been contended that bonus is *not* a share in the profits are (1) that it is not a fixed or certain percentage of the available surplus of profits and (2) it partakes of the

(1) [1955] 1 S.C.R. 991,

nature of a contingent, supplementary wage. These two grounds weighed considerably with the majority of members of the Labour Appellate Tribunal who expressed the view that s. 10 of the Banking Act did not stand in the way of granting bonus to bank employees, because bonus according to them was not a share in the profits of the company. We do not think that either of these two grounds is valid. The first ground arises out of a confusion between the expression 'takes the form of a share in profits' and the expression 'profit sharing' used in a narrow, technical sense. It is undoubtedly true that the bonus formula does not lay down any fixed percentage which should go to labour out of the available surplus. The share of labour will depend on a number of circumstances; but once the amount which should go to labour has been determined, it is easy enough to calculate what proportion it bears to the whole amount of available surplus of profits. There is thus no difficulty in identifying bonus as a share in the profits of the company. It is true that the International Congress on Profit-sharing held in Paris in 1889 adopted the definition of 'profit sharing' in the technical, narrow sense. That definition said that profit sharing was "an agreement (formal or informal) freely entered into, by which the employees receive a share, *fixed in advance*, of the profits" (see Encyclopaedia of the Social Sciences, Seligman and Johnson, Vol. XII, p.487). But that is not the sense in which bonus has been understood in our industrial law, and it is worthy of note that s. 10 of the Banking Act does not use the technical expression 'profit-sharing' but the more general expression 'takes the form of a share in the profits etc.'. We are unable to hold that this general expression has a technical meaning in the sense that the share in profits must be *fixed in advance*, as in technical profit-sharing; such a meaning would, without sufficient reason, exclude from its purview schemes under which the workers are granted regularly a share in the net profits of industry, but in which the share to be distributed among the workers is not fixed in advance but is decided from time to time on *ad hoc*

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basis by an independent authority such as an industrial court or tribunal.

The second ground also appears to us to be equally untenable. Bonus in the industrial sense as understood in our country does come out of the available surplus of profits, and when paid, it fills the gap, wholly or in part, between the living wage and the actual wage. It is an addition to the wage in that sense, whether it be called contingent and supplementary. None the less, it is labour's share in the profits, and as it is a remuneration which takes the form of a share in profits, it comes within the mischief of s. 10 of the Banking Act. It may be asked why should the legislature seek to deprive bank employees, who are not on the managerial or administrative staff, of their industrial claim to bonus when they contribute to the prosperity of the banks? This really is a question of policy on which we are not permitted to speculate. On the one side there is the necessity for safeguarding the integrity and stability of the banking industry, and on the other side there is the claim of employees for a share in the profits. Which claim has a greater urgency at a particular time is really a matter for the legislature to say. We may refer here by way of contrast to s. 31A of the Insurance Act, 1938. That section is in terms similar to s. 10 of the Banking Act, but has some marked differences. Firstly, it specifically mentions bonus, along with a share in profits, in cls. (b) and (c) of sub-s. (1); secondly, it has a proviso which says *inter alia* that nothing in sub-s. (1) shall prohibit the payment of bonus in any year on a uniform basis to all salaried employees etc., or such bonus which in the opinion of the Central Government is reasonable having regard to the circumstances of the case. This merely shows that it is for the legislature to decide how to adjust the claim of employees with the safety and security of the business in which the employees are in employment.

The learned Attorney-General has relied on a number of decisions in support of his contention that bonus comes within the expression 'takes the form of a share in profits'. *In re Young, Ex Parte Jones* (1) it was held

(1) [1896] 2 Q.B. 484.

that a contract that a person shall receive a fixed sum "out of the profits" of a business was equivalent to a contract that he shall receive "a share of the profits" within the meaning of sub-s. 3(d) of s. 2 of the Partnership Act, 1890. A similar question arose in *Admiral Fishing Company* v. *Robinson* (1) in connection with s. 7, sub-s. 2, of the Workmen's Compensation Act, 1906 which said: "This Act shall not apply to such members of the crew as are remunerated by shares in the profits or gross earnings of the working of such vessel." The claimant who was the engineer of a fishing smack was entitled to one share of the net profits of the working of the vessel on the particular voyage. The question was—was he remunerated by shares in the profits? The answer given was that he clearly was so remunerated. In *Costello* v. *Owners of Ship Pigeon* (2) the claimant was employed as a boatswain on a steam fishing trawler and was remunerated by wages, maintenance, and poundage dependent on the profits of the fishing expedition. The House of Lords decided by a majority that the claimant was remunerated by a share in profits within the meaning of s. 7, sub-s. 2, of the Workmen's Compensation Act, 1906.

Shri N. C. Chatterjee has invited our attention to *Newstead* v. *Owners of Steam Trawler Labrador* (3). That was a case of a claim for compensation by the widow of a member of the crew of a fishing vessel, which was lost with all hands. The claim was resisted by the owners on the ground that the deceased was remunerated by a share in the profits or gross earnings of the vessel within s. 7, sub-s. 2 of the Workmen's Compensation Act, 1906, and therefore that the Act did not apply to him. He was employed as chief engineer on board a steam trawler at a fixed weekly wage of £2. 5s. It was the custom of the owners when the gross earnings of the boat exceeded £100 for any one trip (each trip being usually of about a week's duration) to allow a sum of £2 by way of bonus, of which £1 went to the captain and 2s. 6d. to each of the remaining eight members of the crew. If the gross earnings of the

(1) [1910] 1 K.B. 540. (2) [1913] A.C. 407.

(3) [1916] 1 K. B. 166.

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boat exceeded £ 125 the bonus was proportionately increased and so on, but it was not further increased if the gross earnings realised more than £ 175. The decision proceeded on the footing that the bonus in that case was not a share in profits but an additional sum for wages determined by the amount of the gross earnings. Lord Cozens Hardy, M. R., expounded the ratio of the decision in the following words :—

> "The question is whether, having regard to the circumstances, that can be said in the present case. It seems that by the custom of this firm and by the understanding and arrangement between the parties, if the vessel made £ 100 the skipper was entitled to £ 1, and in that particular case each member of the crew was entitled to half a crown. If the vessel made more the skipper and crew were entitled to larger sums. Now what was the effect of that? The bonus was not, as it seems to me any part of the profits, nor was it a share in the gross earnings of the vessel. There was an obligation on the part of the owners of the trawler to pay the half a crown (to take that as one instance) in a certain event, which event was to be determined by the gross earnings of the vessel. I see no ground for holding that it was in any sense of the word a share of the gross earnings of the working of the vessel any more than the actual wages which were payable to the seamen could be treated as being a share of the gross earnings of the vessel, although the bonus as well as the wages would figure in the ship's accounts as against the receipts on the other side."

It seems clear to us that the ratio of the decision does not apply here. The bonus we are dealing with here is not additional wage determined by the amount of profits; it is really part of the availiable surplus of profits distributed to labour for its contribution to the earnings. It does not arise out of any contract to pay, though the claim is recognised as one based on social justice.

Shri Phadke has relied on the decision *In re The Spanish Prospecting Company Limited* (1). That

(1) [1911] 1 Ch. 92.

decision proceeded on the meaning of the word 'profits', of which a classic definition was given by Fletcher Moulton, L. J. In view of the decisions of this Court referred to earlier, it is now beyond dispute that bonus in the industrial sense comes out of profits. If it does, we do not see how it can be held that it is not a share in profits. Shri Phadke suggested that the concept of a share in profits pre-supposes the idea of either a definite amount or a definite proportion determined in advance. This submission we have dealt with at an earlier stage and no useful purpose will be served by repeating what we have said already.

We must now notice two other arguments advanced on behalf of the respondent workmen. These arguments are based on the amendments made in 1956. Section 10 as amended by the Banking Companies (Amendment) Act, 1956 (XCV of 1956) reads, in so far as it is relevent for our purpose—

"S. 10. No Banking Company—

(a) shall employ or be managed by a managing agent; or

(b) shall employ or continue the employment of any person—

(i) who is, or at any time has been, adjudicated insolvent or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal Court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company:

Provided that nothing contained in this clause shall apply to the payment of any bonus by any banking company in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business; or

(iii) whose remuneration is, in the opinion of the Reserve Bank, excessive; or

(c) .....

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Explanation.— For the purpose of sub-clause (iii) of clause (b), the expression "remuneration", in relation to a person employed or continued in employment, shall include salary, fees and perquisites but shall not include any allowances or other amounts paid to him for the purpose of reimbursing him in respect of the expenses actually incurred by him in the performance of his duties.

(2) .....

(3) If any question arises in any particular case wither the remuneration is excessive within the meaning of sub-clause (iii) of clause (b) of sub-section (1), the decision of the Reserve Bank thereon shall be final for all purposes."

It will be noticed that the amended section has a proviso which makes it clear that nothing in the relevent clause in subs-s. (1) shall apply to the payment of any bonus by any banking company in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business. It is clear that the amended section does not stand in the way of the grant of industrial bonus. It was, however, not in force at the time relevent in these appeals, and there is nothing in the Banking Companies (Amendment) Act, 1956, which would make it retrospective in operation. Shri N. C. Chatterjee has, however, contended that the amending Act is declaratory of the law as it always was, and Shri Phadke has contended that the amending Act is parliamentary exposition of the true meaning of s. 10 of the Banking Act. We are unable to accept any of these two contentions. The amending Act states in its long title that it is an Act to amend the Banking Companies Act, 1949. Section 2 states: "For section 10 of the Banking Companies Act, 1949, the following section shall be substituted." There is nothing in the amending Act to indicate that it was enacted to remove any doubt, explain any former statute, or correct any omission or error. What is a declaratory Act? The

following observations in Craies on Statute Law, Fifth edition, pp. 56-57 are apposite:

> "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word 'enacted'."

A remedial Act, on the contrary, is not necessarily retrospective; it may be either enlarging or restraining and it takes effect prospectively, unless it has retrospective affect by express terms or necessary intendment. We are of the view that the amending Act of 1956 is not a declaratory Act, and except in the small matter of the expression 'shall continue to employ' in sub-s. (1), it does not purport to explain any former law or declare what the law has always been. It is an ordinary remedial piece of legislation which came into effect from January 14, 1957. For the period relating to the appeals before us, the amended section was not in force.

This brings us to an end of the two questions, (1) and (2), which directly fall for decision in these seven appeals. Contrary to the findings of the Labour Appellate Tribunal, we have come to the conclusion that (1) the scope of item 5 of sch. II of the relevant notification is not what the Labour Appellate Tribunal thought it to be and the reference of 1952 is not pending for determining the quantum of bonus for the relevant years in respect of particular banks and (2) in any event, s. 10 of the Banking Act, prior to the amendment of 1956, prohibited the grant of industrial bonus to bank employees inasmuch as such bonus is remuneration which takes the form of a share in the profits of the banking company.

We do not think that the other two questions, (3) and (4), require any decision at this stage. It is to be remembered that we are exercising our appellate

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jurisdiction in these seven appeals and not our advisory jurisdiction. These seven appeals stand completely disposed of on the findings which we have given on the two questions already discussed. On our findings the dispute as to bonus referred to the Industrial Tribunal in 1952 has come to an end. The reference is no longer pending and in the view which we have expressed as respects the interpretation of unamended section 10 of the Banking Act no claim for bonus can be adjudicated on for the past relevant years. It is, therefore, not necessary for us to decide hypothetical questions which may arise in any future reference that may be made under the amended section. In the exercise of its appellate powers this Court does not give speculative opinions on hypothetical questions. It would be contrary to principle, inconvenient and inexpedient that opinion should be given on such questions. If and when, they arise, they must arise in concrete cases and to use the words of the Earl of Halsbury, L. C., in *Attorney General of Ontario* v. *Hamilton Street Railway* (1):—

> "It would be extremely unwise for any judicial Tribunal to attempt beforehand to exhaust all possible cases and facts which might occur to qualify, cut down, and override the operation of the particular words when the concrete case is not before it."

It is also to be remembered that no evidence was allowed to be given either by the banks or the bank employees as to the claims for bonus for particular years in respect of particular banks. The dispute was treated, rightly in our opinion, as a dispute relating to the general question of bonus. That general question is now disposed of on the findings which we have already given. We are aware that if and when a future reference as to an industrial dispute relating to bonus is made by the appropriate Government and the amended section falls for consideration, questions (3) and (4) may fall for decision. It would be time enough to decide those questions when they actually arise in concrete cases and we consider that it is not only unwise but inexpedient that we should forestall questions which may arise in future cases and decide

(1) [1903] A.C.524, 529.

them more or less in vacuo and in the absence of necessary materials for the decision of those questions. These are our reasons for holding that questions (3) and (4) should not now be decided. It is necessary to state, however, that any observations which the Tribunals below may have made with regard to questions (3) and (4) would be in the nature of *obiter dicta* and it would be open to both parties to canvass those questions if and when they arise in any concrete case in future. Therefore, we have not considered it necessary to state in detail the contentions raised before us on behalf of the parties concerned with regard to questions (3) and (4).

A few words regarding Civil Appeal No. 62 of 1957 before we conclude. Besides the question of bonus two other questions were raised in this appeal: (1) whether the Labour Appellate Tribunal had jurisdiction to order cancellation and refund of cash deposits and (2) whether the Tribunals below were wrong in holding that the taking of cash deposits etc., should be restricted to workmen of three categories only. When it was pointed out that the cash deposits had already been refunded in accordance with the decision of the Labour Appellate Tribunal the learned Attorney-General who appeared for the appellant in Civil Appeal No. 62 of 1957 (The Punjab National Bank, Limited) did not press those points. Therefore, in Civil Appeal No. 62 of 1957 also the only surviving question is the question of bonus on which we have already given our decision.

Shri Sadhan Chandra Gupta appeared on behalf of the respondents in Civil Appeal No. 62 of 1957 and made his submissions on the question of bonus. He has taken a stand on s. 2 of the Banking Act and has contended that even if bonus is remuneration which takes the form of a share in profits, s. 2 saves the power of industrial tribunals to award such bonus under the Industrial Disputes Act, 1947, and such award, if made, will impose an obligation on banks to pay the bonus awarded and would not make them liable to penalty under s. 46 of the Banking Act. We have dealt with this argument at an earlier stage and have pointed out that s. 2 is a saving provision with regard

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to any other law for the time being in force, provided there is no express provision to the contrary in the Banking Act. If, as we hold, unamended s. 10 of the Banking Act expressly prohibits the employment of any person by a bank whose remuneration takes the form of a share in the profits of the company, then s. 2 of the Banking Act is of no help and cannot permit something which is expressly prohibited by s. 10.

For the reasons given above, we allow these seven appeals to the extent already indicated, namely, (1) the reference of 1952 is not now pending for determining the question of bonus for the relevant years in respect of particular banks and (2) section 10 of the Banking Act prior to the amendment of 1956 prohibits the grant of industrial bonus to bank employees when such bonus is remuneration which takes the form of a share in the profits of the banking company. In the circumstances of these cases and in view of the long drawn out nature of the dispute, we make no direction as to costs.

Appeals allowed in part.

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May 12.

SHRI JAGDISH MILLS LTD.

v.

THE COMMISSIONER OF INCOME-TAX, BOMBAY NORTH, KUTCH AND SAURASHTRA, AHMEDABAD

(S. R. Das, C. J., N. H. Bhagwati, and M. Hidayatullah, JJ.)

Income-tax—Assessee company manufacturing and supplying goods from outside British India—Stipulation for payment by cheque—Cheques remitted by post from British India—Post Office, if an agent of the assessee—Income, if received in taxable territories—Indian Income-tax Act (XI of 1922), s. 4(1)(a).

The appellant company, carrying on business in manufacturing and selling textiles at Baroda, received in the assessment years 1942-43 and 1943-44 payments in cheques from the Government of India for the supply of such goods on bills submitted, as agreed upon in prescribed printed forms which provided that the Government should pay the amount due to the appellant by cheque. The appellant, however, did not request or write to the Government indicating in what way the payment by cheque was