

(1958) 09 BOM CK 0019

In the Bombay High Court

Case No : Reference No's. 60 and 61 of 1958

Arvind Mills Co-operative Supply Society Ltd., Ahmedabad
and Another

APPELLANT

Vs

Their Workmen

RESPONDENT

Date of Decision : 04-09-1958

Acts Referred:

Factories Act, 1948 — Section 46, 54
Industrial Disputes Act, 1947 — Section 25F

Citation : (1959) 2 LLJ 107

Hon'ble Judges : N.L. Vyas, J

Bench : Single Bench

Judgement

1. Both these disputes were referred for adjudication to Sri Syed Taki Bilgrami, and are transferred to this tribunal by the president of the industrial court. In both these references with the exception of one demand, all other demands are identical. Moreover, the dispute is about wages and other conditions of work of workmen employed in the canteens which the textile mills in the State have to maintain under the rules framed under S. 46 of the Factories Act. The employers are two co-operative societies and the employees are the workmen employed in the canteens managed by these co-operative societies. Consequently, the demands are regarding wage structure and other conditions of service of workmen employed in the same industry. With the consent of the parties, therefore, I have heard both the references together and I am making a common award.

2. The demands which are identical in both the references are as follows :-

(1) All the workmen working in the canteen should be classified. They should be put into respective category and designated and should be paid wage-scales as shown below :- Skilled - Rs. (A) Manager 100-10-150-15-225
Supervisor 90-7-125-10-175 (B) 1. Coupons sellers. 75-5-100-7-135 2. Cashier 75-5-100-7-135 3. Fersan- makers. 75-5-100-7-135 4. Tea- maker.

75-5-100-7-135 Semiskilled - Assistant to tea- maker. 55-3-70-5-95 Assistant to farsan maker. 55-3-70-5-95 Assistant to all the skilled workmen. 55-3-70-5-95 Unskilled - A. Chokadiwala 40-3-55-5-80 B. Hotel boy 35-2-45-3-60

(2) Casual leave. - All the workmen working in the canteen should be granted ten days" casual leave with wages (with dearness allowance) per year.

(3) Sick leave. - All the workmen working in the canteen should be granted fifteen days" sick leave with wages (with dearness allowance) per year and should be allowed to accumulate it for 45 days.

(4) Adjustment. - All the workmen who have put in more than three years" service but less than six years" service should be paid two increments and more than six years and less than nine years should be paid three increments and less than three years should be paid one increment.

No workmen should be adversely affected by the new wage-scales.

In addition there is a demand for gratuity in Reference No. 61 of 1958 as follows :-

"All the workmen should be paid gratuity on the scale of textile mills of Bombay as awarded by Full Bench of Industrial Court."

In Reference No. 60 of 1958 there is not additional demand for scaled holidays which the textile workmen enjoy. In both the references there is a demand for granting the wage-scales retrospectively from 1 September 1957.

3. In both the references statements of claim are filed by the workmen. The workmen in both the references are represented by the same union. It is urged in the statements of claim in both the references that the textile mills are under obligation to maintained a canteen, and if such canteens are maintained by the textile mills, the workmen employed in the canteens have to be paid at the same rate as the other mill operatives. It is also urged that in the canteens run by the textile mills or by the contractors, dearness allowance equal to that paid to the textile mill operatives is being paid to the workmen employed in the canteens. But in the canteens which are managed by the co-operative societies, dearness allowance is not paid at the same rate and it varies from 50 per cent to 80 per cent of the dearness allowance paid to the textile mill operatives. It is further urged that the wages paid to different classes of workmen are low and there are no wage-scales, and therefore this tribunal should determine the wage structure on some rational basis. Similarly, casual leave and sick leave are claimed for the workmen on the ground that usually in all the industrial establishments, including hotels, such leave is being granted to the workmen.

4. In the written statements both the co-operative societies have mainly urged that the wages that are being paid to different classes of workmen in the canteens are high when compared with the wages paid in the hotels of

Ahmedabad, and therefore there is no case for granting higher wage-scales to the workmen. It is further urged that the co-operative societies are not earning high profits, but on the contrary are working in loss, and therefore also there also no case for granting higher wages. If at all, it is urged, the wages paid to the workmen in the canteens should be compared with the wages paid to the workmen employed in the hotels in Ahmedabad, and if it is found that the wages paid in the canteens are higher than those paid in the hotels, the demand for revision of the wage structure should be rejected. In Reference No. 61 of 1958 preliminary objection was also raised that as by settlement, dated 11 July, 1952, the minimum wage of the lowest category of workmen was fixed at Rs. 28 per month and dearness allowance was fixed at 50 per cent of the textile rate, and as it was not established that there was any change in circumstances thereafter, this tribunal should not disturb the wage structure as established by the said settlement. Similar contention is also raised in the written statement filed in Reference No. 60 of 1958. As regards the other preliminary objections, I heard the parties first, and these objections were overruled by my order dated 12 August, 1958. It is therefore not necessary to consider those preliminary objections over again.

5. But in Reference No. 60 of 1958 another preliminary objection was urged on behalf of the society, and that objection was supported by the learned advocate of the society in Reference No. 61 of 1958. This preliminary objection urged on behalf of the society in reference No. 60 of 1958 is that the society being governed by the Bombay Co-operative Societies Act, 1925, reference of the dispute between the society and its workmen to this tribunal is barred by the provisions of S. 54 of the said Act. In order to appreciate this objection, it is necessary to refer to S. 54 of the Bombay Co-operative Societies Act, 1925. According to this section, if any dispute touching the constitution or business of a society arises between, inter alia, the society or its committee and any officer, agent, member, or servant of the society, past or present, it shall be referred to the Registrar for decision by himself, or his nominee, and two persons of whom one shall be nominated by each of the parties concerned. On the basis of this section, it was urged that the dispute about the wage structure and other conditions of service between the society and its workmen was a dispute between the society and its employees touching the business of the society, and therefore according to this section, such dispute must be referred to the Registrar for decision or to the arbitration of three arbitrators as laid down in this section. The learned advocate for the society urged that the Bombay Co-operative Societies Act, 1925, being a special Act providing for a special machinery for the decision of disputes arising between the society and its employees, the provisions of such Act would prevail over the provisions of the Industrial Disputes Act, 1947, which was a general Act providing for the reference of industrial disputes to industrial tribunals for adjudication. The learned advocate also urged that the dispute about the wage-scales or about other conditions of service between the society and its employees was a dispute

touching the business of the society and therefore such dispute can only be referred in accordance with the provisions of S. 54 to the Registrar for decision or to the arbitration of three arbitrators. In support of this contention reference was made to the decision of the Bombay High Court in *G.I.P. Railway Employees Co-operative Bank Ltd. Vs. Bhikhaji Merwanji Karanjia*, . Reference was made particularly to the following passage at p. 344 of the report :-

"The word "business" is a very wide term and certainly it is not synonymous with the objects of a society. The expression "touching the business of a society" would mean affecting the business of a society or relating to the business of a society; and, it cannot be said that when a company employs or dismisses a servant, it does not do something which relates to its business. It is true that it is not one of the objects of the company to employ or dismiss servants; but it is something which it does in the ordinary course of its business. And whatever is done in the ordinary course of business certainly relates to or affects the business."

6. It would appear from the decision of the Bombay High Court that if there is a dispute between the society and its workmen about the propriety or otherwise of dismissal of servants, such a dispute must be considered to be the one touching the business of the society and must therefore be referred to the Registrar, or to the arbitrators as provided in S. 54. But it must be borne in mind that when the Bombay Co-operative Societies Act, 1925, was passed, there was no statute like the Industrial Disputes Act, 1947, for the compulsory adjudication of Industrial disputes between the employers and the employees. When, therefore, enacting S. 54 of the Bombay Co-operative Societies Act, 1925, the legislature must not have in view any industrial dispute between the employers and the employees as provided for in the Industrial Disputes Act, 1947. The definition of an industrial dispute in the Industrial Disputes Act, 1947, is wide enough to include a dispute regarding the wage-scales and conditions of service between a co-operative society and its employees. Moreover, the Industrial Disputes Act, 1947, cannot be considered to be a general Act. It is as much a special Act providing for special class of disputes as the Bombay Co-operative Societies Act, 1925, is a special Act providing for organization, etc., of the co-operative societies. Moreover, S. 54 is in the chapter about liquidation and arbitration. The dispute mentioned in S. 54 must therefore be considered to be a dispute other than an industrial dispute defined in the Industrial Disputes Act. Such dispute may be regarding the propriety, or otherwise of dismissal of a workman, or about his claim for wages under the contract of service he has entered into with the society. But it can hardly be said that the legislature had in mind an industrial dispute of the nature covered by the Industrial Disputes Act, 1947, when it referred to a dispute between the society and its employees in S. 54.

7. I am fortified in the view I have taken by the recent decision of the Calcutta High Court in *Co-operative Milk Societies Union Ltd. Vs. State of West Bengal and Others*, . There also it was held that the dispute referred to in S. 86, which is

corresponding to S. 54 of the Bombay Act, was a dispute other than an industrial dispute. The Calcutta High Court also took the view that the Industrial Disputes Act, 1947, was a special Act in the sense that industrial disputes have to be referred for compulsory arbitration in accordance with the provisions of that Act. It was therefore held by the Calcutta High Court that the Industrial Disputes Act is a special statute relating to the settlements of all industrial disputes whether they relate to co-operative societies or other establishments. The following observations at p. 65 of the report are relevant :

"I, therefore, hold on a proper interpretation that the Industrial Disputes Act is the special statute relating to the settlement of all industrial disputes whether they relate to co-operative societies or other establishments. From that point of view and from the point of view of industrial disputes the Industrial Disputes Act is the special statute and the Bengal Co-operative Societies Act is the general statute. So long as the dispute is industrial within the meaning of the words "industrial dispute" under the Industrial Disputes Act, that Act has the exclusive jurisdiction. The preamble to the Industrial Disputes Act says that it makes "provision for investigation and settlement of industrial disputes and for certain other purposes." The questions relating to wages and wage-scales and dearness allowances of this Co-operative Milk Societies" Union, Ltd., satisfy the definition of an industrial dispute as enacted in the Industrial Disputes Act. In coming to that conclusion I am also fortified by the fact that there are many large co-operative societies which are much bigger than many of the smaller industrial establishments and I see no reason why settlement of industrial disputes would not therefore be left to the care of the Industrial Disputes Act."

8. It has also to be borne in mind that the subject "trade unions, industrial and labour disputes" falls under list 3 of the concurrent list of the Sch. VII of the Indian Constitution. The Bombay Co-operative Societies Act, 1925, is a State Act, the subject coming under entry 32 of the State list 2 of the Sch. VII. The Industrial Disputes Act, 1947, is a Central Act falling under list 3 which is a concurrent list. As already stated, the Bombay Co-operative Societies Act, 1925, is a State Act falling under list 2 which is a State list. Therefore, the provisions of a Central Act on any subject falling in the concurrent list would prevail over the provisions of an Act on a subject falling under the State list if the provisions of such State Act are repugnant to the provisions of the Central Act falling under list 3. But there is no repugnancy between the provisions of the Industrial Disputes Act and those of the Bombay Co-operative Societies Act, 1925, as I have held that the dispute referred to in S. 54 is not an industrial dispute. But even if it be assumed that there is such repugnancy, the provisions contained in a later Central Act on a subject in the concurrent list must prevail over the provisions of a State Act on a subject in the State list. This is clear from Art. 254 of the Constitution. In such a case Sub-clause (2) of Art. 254 would not apply, because the Industrial Disputes Act, 1947, is a later Act in which there is no specific exemption made in case of disputes between co-operative societies and its employees. Moreover, as regards this particular provision, no assent of the

President as provided in Sub-clause (2) of Art. 254 appears to have been taken.

9. The learned advocate for the society referred to the maxim *generalia specialibus non derogant*, and urged that the Bombay Co-operative Societies Act being a special Act, it must prevail over the Industrial Disputes Act which is a general Act. But even assuming that the Industrial Disputes Act, 1947, is a general Act, it should be borne in mind that when the nature of the general Act is such that it was unlikely that the legislature intended to make an exception as regards this special Act, the later general Act would prevail. I may refer to the following observations in Maxwell on the Interpretation of Statutes :-

"Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language (v), or there be something which shows that the attention of the legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one (x), or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one."

10. In the result I feel no doubt in holding that a dispute between the co-operative society and its employees which would fall under the definition of industrial dispute in the Industrial Disputes Act, can be referred for adjudication to the industrial tribunal in accordance with the provisions of that Act. Such a reference is not barred by the provisions of S. 54 of the Bombay Co-operative Societies Act, 1925. This preliminary objections is therefore overruled.

11. Before I proceed to consider the demand about wage-scales of different classes of workmen employed in the canteens, it would be appropriate to dispose of one contention, raised on behalf of the societies. It was urged that these canteens must be classed as hotels, and if I am satisfied that the wages paid in the canteens are higher than those paid in the hotels in Ahmedabad, the demand for granting higher wages or wage scales should not be granted. It is true that there were several references regarding different hotels in Ahmedabad and wage-scales for three categories of workmen, namely, skilled, semiskilled, and unskilled, were determined by industrial tribunals in several awards. The wage-scales as determined by the tribunals for different classes of workmen employed in the hotels in Ahmedabad are :

Rs. Skilled 35-3-65-4-85 Semiskilled 23-3-35-4-55 Unskilled 19-1 1/2-28-2-40

These wages are inclusive of dearness allowance, But all these classes of workmen are being provided food, shelter, tea, and snacks by the hotels. These amenities are valued by the societies at Rs. 22 per month. On behalf of the union it was urged that these amenities cannot be valued at only Rs. 22 per month. It

was urged that the value of these amenities should be assessed at Rs. 35 per month. But this aspect of the case will be considered by me later on. It is enough to say at present that incremental wages-scales have been determined by awards in respect of all classes of workmen in the hotels in Ahmedabad. It was therefore urged on behalf of the societies that the workmen working in the canteens are not entitled to any wages higher than those fixed for the workmen working in the hotels, as the nature of work is similar. It is true that the nature of work that the workmen in the canteens have to do is similar, but in my view there are special circumstances justifying the treatment of the workmen of the canteens as a class by themselves. Even the textile mills and the contractors, and the co-operative societies which are managing these canteens, have treated the workmen employed in the canteens as a class by themselves, because by the agreement dated 11 July, 1952, which was between all the canteen employers and the canteen workmen, higher wages were agreed to for the canteen employees. The minimum wage for the lowest category of workmen was fixed at Rs. 28 for 26 working days by this agreement, and dearness allowance was fixed at 50 per cent of the textile rate. The dearness allowance would therefore come to about Rs. 35 per month. It was also admitted at the hearing that all canteen employees are provided with dresses and tea, and snacks. These amenities were valued by both the parties at Rs. 7 per month. On this basis the total emoluments of the lowest category of workmen would come to Rs. 70 per month. This would be considerably higher than the minimum wage of the lowest category of workmen employed in the hotels in Ahmedabad. There the minimum wage is fixed at Rs. 19 per month inclusive of dearness allowance and the amenities are valued by the societies at Rs. 22 per month. But even if amenities are valued at Rs. 35 per month, the total emoluments would come to only Rs. 54 per month. It would be clear, therefore, that the employers themselves, whether they were the textile mills, the contractors, or the co-operative societies, considered in 1952 that the workmen in the canteens were entitled to higher wages than those paid in the hotels in Ahmedabad.

12. But apart from this circumstance, there is a still more weighty reason for considering these workmen as a class by themselves. The canteens are not essentially profit-making establishments and consequently ordinary principles enunciated by the Supreme Court, in what is known as the working journalists' case, about considering the profit-earning capacity of the industry before allowing increase in wages, would not apply. According to that decision of the Supreme Court, it is no doubt true that the profit-earning capacity of the industry as a whole or at least a fair cross-section of it has to be considered when determining the wage structure. This has to be determined on industry-cum-region basis. But, as I have already stated, these canteens are not essentially profit-making establishments, and therefore the capacity to bear the burden of increase in wages in ordinary sense has not to be considered. What is material would be, the wages paid by the textile mills or the contractors appointed by the textile mills to the workmen employed in their canteens, because according to

law it is the primary duty of the textile mills to maintain canteens in their establishments for the benefit of the workmen employed in the mills. It would therefore be necessary to consider as to what the liability of the textile mill is regarding the maintenance of canteens. Section 46 of the Factories Act provides that the Provincial Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. Sub-section (2) of this section provides that such rules may provide inter alia for the standard in respect of construction, accommodation, furniture and other equipment of the canteen, the foodstuffs to be served therein and the charges which may be made therefor. It would appear from this section that after rules are made by the Provincial Government, it would be obligatory for an employer to maintain a canteen or canteens for the use of the workers. Now rules 72 to 78 made under S. 46 provide for the maintenance and organization of the canteens. It appears from these rules that it is the duty of the management of a textile mill to provide a suitable building for the canteen, and also to provide furniture, utensils and other equipments therefor. The rules also provide for the maintenance of the building, the furniture and the equipment. When the canteen is managed by a co-operative society, according to sub-rule (3) of rule 74, the textile mill has to provide the initial equipment for such canteen, and thereafter the equipment would have to be maintained by the co-operative society. But the important rule is rule 78, which provides that the chief inspector will have the right to issue rules or directions regarding the foodstuffs to be served, and the charges to be made therefor, and when issuing such rules or directions, the chief inspector shall take into consideration the menu in vogue in the region, and exclude rent for the land and building, interest on the amounts spent on the provision and maintenance of furniture and equipment, depreciation charges, electric charges, and the element of profit. Only a co-operative society is allowed to make a profit of 5 per cent on its working capital. It would be clear from this rule that in fixing the charges for the foodstuffs supplied in the canteen the rent of the land and the building, the interest on the amounts spent on the provision and maintenance of furniture and equipment, depreciation charges, and electric charges, are not to be taken into consideration. When a canteen is run by the management of the textile mill, no profit is also to be included when fixing the rates of the foodstuffs supplied in the canteen. It will be clear from these rules that the canteens have to be maintained by the textile mills employing more than 250 workmen as a duty cast upon them by law and as a non-profit-making institution. Only the co-operative societies are allowed to charge a profit of 5 per cent on their working capital. Essentially, therefore, the canteens are non-profit-making establishments, and they have to be run as non-profit-making establishments and if running them as non-profit-making establishments, the co-operative societies who are running the canteens on behalf of the textile mills cannot make two ends meet if the same wages as are paid to similar class of operatives in the textile mills are paid, it is in my view the duty of the textile mills to give adequate subsidy to the co-operative societies. But the co-operative

societies cannot be heard to say that as they are primarily for the benefit of their members who are the consumers, namely, the textile operatives, they must fix the rates of foodstuffs so low as to be advantageous to the textile operatives, and in doing so if lower wages have to be paid, the industrial tribunal should not interfere if such wages are higher than these paid in the hotels in Ahmedabad. In my view such an argument is fallacious because it is, as I have stated, the primary duty of the textile mills to run the canteens as laid down in rules 72 to 78 of the factory rules. If the textile mills or the contractors appointed by them, run the canteen themselves, they would to have to pay the same wages as are paid to the other textile operatives. There is no reason, therefore, for the co-operative societies not to pay the same wages if they run the canteens instead of the textile mills, or the contractors appointed by such mills. If the textile mills refuse to pay adequate subsidy to pay the same wages to their employees as are paid in the canteens run by the textile mills themselves, the remedy is to wind up the society and hand over the canteens to the textile mills. But would certainly create disaffection among the workmen employed in the same nature of establishments if different wages are paid by different employers. It would be particularly so when the co-operative societies can easily refuse to run the canteens on behalf of the textile mills, if no help were forthcoming from the textile mills to pay the same wages to their workmen. It was urged at the hearing that if the co-operative societies were to give up the management and hand over the canteens to the textile mills, the textile mills would not serve the same good quality of foodstuffs to the workmen, and would hand over the management to the contractors. It was further urged that if the canteens would be run by the textile mills or by the contractors, it would be the workmen working in the textile mills who would suffer. But this apprehension would appear to be unfounded, because powers have been given to the chief inspector of the factory to inspect the canteens and to test the quality of the foodstuffs supplied and to issue rules and directions regarding the foodstuffs supplied and the charges of such foodstuffs. After all even the canteens managed by the co-operative societies would not be run by the mill operatives, it would be the managing committee who would look after the management, and in such managing committees, I found from the bylaws of the society that the textile mills are represented to the extent of nearly 50 per cent., The textile mills have therefore a very effective voice in the management of the canteens run even by the co-operative societies. At any rate, it will be clear from what is stated above that these are non-profit making establishments for the benefit of the operatives, and therefore ordinary principles regarding the profit-making capacity or otherwise of an establishment would not apply. Further, I am of the opinion that this friction between employees and employees, namely, the employees working in the canteens and the employees who are members of the co-operative societies, should not be allowed to continue and for the sake of maintenance of industrial peace same wages as are paid to other textile operatives should be paid to the workmen working in the canteens, if necessary, by granting adequate subsidy to the societies. On all these grounds I am of the opinion that these

workmen should be considered as a class by themselves, and their wages cannot properly be compared with the wages of the workmen working in the hotels.

13. It should also be considered that out of about 62 mills which are required to maintain canteens, 5 mills maintain the canteens themselves, 17 are managed by the contractors, and the rest by the co-operative societies. It was stated at the hearing that there are in all 45 such co-operative societies. It was further stated at the hearing that the minimum wage of the lowest category of workmen is the same, namely, Rs. 28, in all the canteens, whether managed by the textile mills directly, or through the contractors, or by the co-operative societies. In none of the canteens dearness allowance is paid at a rate lower than 50 per cent of the textile rate. But in 5 canteens managed directly by the textile mills, and in 17 canteens managed through the contractors, and in 3 canteens managed by the co-operative societies, the same dearness allowance as is paid to the textile operatives is being paid. This would mean that the lowest category of workmen receives a basic wages of Rs. 28 plus about Rs. 70 as dearness allowance. The union has also filed a statement showing the rate of dearness allowance in 12 canteens managed by the co-operative societies. In these canteens the dearness allowance varies from 60 to 80 per cent of the textile rate. It would therefore appear that in nearly 37 canteens dearness allowance higher than 50 per cent of the textile rate is being paid. The total minimum emoluments of the lowest category of workmen are therefore higher than Rs. 70 per month. Even in the canteen in the Arvind mills, 6 out of the 31 employees who are clerks, supervisors, etc., are paid dearness allowance which is 80 per cent of the textile rate. The total emoluments of the lowest category of workmen in the canteens in which dearness allowance equal to the textile rate is being paid would come to Rs. 28 plus 7 plus Rs. 70 = 105. In the Arvind mills the rate of dearness allowance was increased from 50 per cent of the textile rate to 66 $\frac{2}{3}$ per cent from 1 July, 1957. At this rate the total emoluments of a minimum wage-earner would come to Rs. 28 + 7 + 46 = 81. In the Shorrock mills canteen dearness allowance is paid at 50 per cent of the textile rate, and on this basis the total emoluments of a minimum wage-earner would come to Rs. 70 per month. This would show that the total emoluments of a minimum-wage earner in the canteens in different mills range from Rs. 70 to Rs. 105. In my view this is not a very satisfactory state of affairs, and the employers on the one hand and the workmen on the other should come to a reasonable settlement about the rate of dearness allowance in all the canteens. There is no reason why the same dearness allowance as is paid to the textile operatives should not be paid to the workmen working in the canteens. But in these two references there is no question about increasing the dearness allowance and therefore I refrain from considering that question. I have only referred to this varying rate in different canteens for the purpose of fixing the wage-scales of different classes of workmen so that the total emoluments of the workmen may almost be the same in all the canteens.

14. The learned advocate for the Arvind Mills Co-operative Society urged that

there was no case for granting wage-scales or increase in wages in his canteen, as the workmen are being paid dearness allowance at a higher rate. It is true that the increase in dearness allowance was granted very recently that is, from 1 July, 1957. It also appears that provident fund scheme was introduced voluntarily by this society from 1 July, 1957. The increase in dearness allowance was also granted voluntarily by society. It was stated at the hearing that the additional burden on this account would come to Rs. 7,500. Because of this additional burden it was urged that the society was in no position to bear any further additional burden consequent upon the granting of incremental scales. But it appears that this is a well-established society having substantial reserves. Moreover in both the canteens the rates of foodstuffs are much lower than those of similar articles sold in the hotels. But I am not considering the question about granting the incremental scales from the point of view of the capacity the society to bear the burden. As already stated, it is primarily the duty of the textile mills to run the canteens, and if the society intends to continue to run canteen, and to charge the same low rates for the foodstuffs, it should obtain the subsidy from the mills in order to enable it to pay the same wages as are being paid to the other workmen of the canteens, namely, the workmen employed in the canteens either directly managed by the mills or by the contractors. Similarly, it was urged on behalf of the Shorrock Mills Co-operative Society that the incremental wage-scales may be granted on the basis that the dearness allowance should be continued to be paid at 50 per cent of the textile rate. On this basis the learned advocate for that society suggested the incremental wage scales for the skilled the semiskilled and the unskilled workmen : skilled Rs. 52 - 4 - 84, semiskilled Rs. 32 - 3 - 56, and unskilled Rs. 28 - 1 1/2 - 40. But I do not think I would be justified in accepting these incremental wage-scales on the basis that the workmen would be continued to be paid dearness allowance at 50 per cent of the textile rate. As already stated, there is no reason why the workmen of all the canteens in the textile mills should not be paid the same dearness allowance as is being paid to the workmen of the canteens managed by the textile mills either directly or through the contractors. Technically it may be correct that the workmen employed in the canteens managed by the co-operative societies may not be the employees of the textile mills. The decision of the Bombay High Court on this point has to be treated as binding. However, the initial responsibility for maintaining the canteens rests on the textile mills, and if any one takes over this initial responsibility of the textile mills to maintain the canteens, that person cannot be heard to say that he has not the capacity to pay the same wages that are being paid to the workmen of the canteens managed by the textile mills either directly or through the contractors. I must therefore fix the wage-scales on the basis of the total emoluments of the workmen employed in the canteens managed by the textile mills either directly or through the contractors.

15. Both the societies have submitted the statements regarding the initial and present wages of the different classes of workmen. It appears from the statement submitted by the Arvind Mills Co-operative, Society that the

employees are classified into only two categories, skilled and unskilled. Coupons sellers, coupons collectors, farsan makers, tea-makers, and cook, are placed in skilled category, and their present basic wages range from Rs. 44 to Rs. 78. Their initial wages, when they were appointed, range from Rs. 15 to 80. One cook was appointed on Rs. 15 in 1956, and the farsan maker was appointed on a salary of Rs. 80 in 1950. The others were appointed on initial basic salaries ranging from Rs. 30 to Rs. 35. All unskilled workmen who are mostly hotel boys get Rs. 28 per month as a basic wage. From the statement submitted by the Shorrock Mills Co-operative Society it appears that the present wages of supervisor, farsan makers, and coupon sellers range from Rs. 58 to 78, and their initial wages range from Rs. 50 to Rs. 60. All these workmen are classed as skilled, and the tea-makers are classed as semiskilled. The present basic salary of tea maker is Rs. 38, and his initial salary was Rs. 33. The boys who are classed as unskilled get Rs. 28 per month, and their initial basic was Rs. 20 per month. Now there is no doubt that the unskilled workmen who are boys or waiters have been getting Rs. 28 per month after the settlement of 1952. As no incremental wage-scales were fixed by that settlement a boy or a waiter appointed in 1952 on a salary of Rs. 28 is getting the same salary even to-day. If, therefore, incremental wage-scales had been granted by the settlement of 1952, and if the yearly increment had been of Rs. 1 1/2 as suggested by the learned advocate for the Shorrock Mills Co-operative Societies, this class of workmen would have reached to-day the salary of Rs. 35 at least. The minimum basic wage of Rs. 28 has been fixed years before, and there has been a rise in the cost of living thereafter. Incremental wage-scales have been fixed even in the hotel industry in Ahmedabad, and the yearly increment of Rs. 1 1/2 is granted to the unskilled workmen. As already stated, the wage-scale of the unskilled workmen in the hotel industry is fixed at Rs. 19-1 1/2-28-40. It is true that even if the total emoluments, including the value of amenities, of the different classes of workmen employed in the hotels in Ahmedabad are compared with the total emoluments of the different classes of workmen employed in the canteens, it would appear that the workmen employed in the canteens are better off, and are receiving substantially higher wages. Even so, the minimum basic wage of Rs. 28 fixed in the textile industry is far too low when the paying capacity of the textile industry is considered, because after all it is the primary liability of the textile industry to maintain the canteens. Considering, therefore, the time that has elapsed after this minimum wage of Rs. 28 was fixed, I am of the opinion that the incremental wage-scale should be fixed at Rs. 31 - 1 1/2 - 43 for the unskilled workmen. Even if this wage-scale is fixed for the unskilled workmen in the canteens run by these two societies, the total emoluments would not be higher than those of the workmen employed in the canteens managed by the textile mills directly or through the contractors.

16. The semiskilled workmen mentioned in the orders of reference are assistants to tea-makers, and farsan makers and to all skilled workmen. It was stated at the hearing that there are no such assistants. The learned advocate for the Shorrock mills Co-operative Societies contended that the tea-maker should be

classed as semiskilled, because he was classed as semiskilled in the awards relating to the workmen employed in the hotels. It is true that in those awards tea-maker is classed as semiskilled. But it appears that the tea-maker is classed as skilled workman by the Arvind Mills Co-operative Society, and the two tea-makers in the employment of that society are actually receiving Rs. 60 and Rs. 77. One was appointed in 1946 on a salary of Rs. 35, and the other in 1948 on a salary of Rs. 55. Both the tea-makers in the Shorrock Mills' canteen are receiving at present Rs. 38 per month. No chart was produced before me about the present wages of tea-makers in other canteens. In view of the fact that the tea makers in the Shorrock Mills canteen receive at present Rs. 38 per month, it would be appropriate to place them in the semiskilled category. As it appears that even in that canteen they were appointed on Rs. 33 per month, it would not be inappropriate to fix the wage-scale of semiskilled workmen at Rs. 38 - 3 - 62. If there are assistants to skilled workmen such as farsan makers and chavana makers, they shall be placed also in the semiskilled category.

17. There is no dispute that the supervisors, cook, farsan makers, chavana makers, coupon sellers, and coupon collectors, should be placed in the skilled category. It is not necessary to consider the case of cashier, as there is no cashier in any of these canteens. It also appears from what was stated by the learned advocates at the hearing that the duties performed by the supervisors in one canteen are similar to the duties performed by a coupon collector in the other canteen. I am therefore of the opinion that supervisor, cook, coupon seller, coupon collector, and farsan and chavana makers should be placed in the skilled category. Their present wages in the Shorrock Mills' canteen range from Rs. 52 to Rs. 72, and they were appointed on the initial basic wages ranging from Rs. 50 to 60. In Arvind Mills' canteen their present wages range from Rs. 44 to Rs. 78. It is the cook who is getting Rs. 44. This is probably because there is a lodge attached to the canteen, and the workmen working in the lodge are also supplied with free meal. The value of the other benefits in the case of these workmen would be higher than the value of the amenities granted to the workmen working in the canteen. However, the work of a cook is arduous and of longer hours than that of a chavana maker or farsan maker. Consequently, he should also be placed in the same wage-scale even though he is also given free meal. Considering, therefore, the initial wages on which these workmen were appointed and their present wages, a wage-scale of Rs. 56 - 4 - 88 would be adequate for them. In the result, the following three wage-scales for skilled, semiskilled and unskilled are prescribed :

Rs. Skilled 56-4-88 Semiskilled 36-3-62 Unskilled 31-1 1/2-43.

18. It is not necessary to fix the wage-scale of the manager because it was stated at the hearing that the manager is performing mostly managerial or administrative duties. It is also admitted that he is not member of the union. The demand about framing his wage-scale is therefore rejected. I do not think I would be justified in granting the wage scales as demanded by the union, as they

are far too high when it is considered that a workman not only gets amenities which can be valued at Rs. 7 per month, but is also being paid dearness allowance which ranges from 50 per cent to 100 per cent of the textile rate which would come to about Rs. 35 to Rs. 70.

19. Demand 4 in both the references is about adjustments. According to this demand at least three increments should be given to the workmen in the new pay scales according to their length of service. One increment for every three years of service is demanded. As incremental scales are granted for the first time, and as so many of the employees have been in service for a number of years, it would be improper not to grant adjustments in the new pay scales at the same time it would not be proper to grant point to point adjustment. In my view it would be reasonable to direct the societies to grant one increment for three years of service, two increments for six years of service, and three increments for more than nine years of service. The basic salaries of the employees, after they are appropriately classified by the management in consultation with the union, shall be adjusted in the new pay scales on this basis, but no workmen shall be adversely affected by reason of the introduction of the new wage-scales. Those workmen who are receiving less than the minimum of the new wage-scales, shall be brought up to the minimum, and those who are receiving more than the minimum but less than the graded step in the new wage-scales, shall be brought up to the next graded step, and the increment shall be given on such salaries in the manner stated above. The salaries of the workmen shall be adjusted in the wage-scales within two months from the date of publication of this award. In both the references it is demanded that the new wage-scales should be introduced retrospectively from 1 September, 1957. In my view this would impose a very heavy burden on the societies. I would therefore direct that the salaries of the workmen in the new wage-scales shall be adjusted as from 1 September, 1958. The difference in the existing wages and the wages as may be determined under this award shall be paid to the workmen within three months from the date of publication of this award.

20. Casual leave and sick leave. - The learned advocate for the Shorrock Mills Co-operative Society conceded that 7 days" casual leave and 7 days" sick leave may be granted to the workmen. It is usual to grant such sick leave in almost all the industrial establishments. The learned advocate for the other society contended that in view of the fact that the society had voluntarily introduced the provident fund scheme and had increased the rate of dearness allowance with effect from 1 July, 1957, the additional burden of sick leave and casual leave should not be imposed. But in my view such leave should be granted, as even in the hotel industry such leave is granted. It is therefore directed that 7 days" casual leave shall be granted to the workmen of both the canteens, but the workmen shall not be entitled to more than 2 days" casual leave at a time. Similarly, 7 days" leave shall be granted to all the workmen of both the canteens, with a right to accumulate up to 21 days.

21. In reference No. 61 of 1958 regarding the Shorrock Mills' canteen, there is a demand for introducing the gratuity scheme. The learned advocate for the society stated that the society would have no objection to introduce the same gratuity scheme as was provided for in the awards regarding the hotels in Ahmedabad. In these awards gratuity was granted to the workmen on voluntary retirement or resignation after 15 years, and on termination of service by the management. The maximum allowed was 7 1/2 months' basic wages after 15 years of service. This would mean that if a workman has put in more than 15 years' service, he would not get more than 7 1/2 months' basic salary. It is usual to fix the maximum at 10 months' basic salary. I see no reason to make an exception in the case of canteens, particularly when I have treated the canteens as a class different from the hotels. In my view, therefore, the usual gratuity scheme should be introduced. In the result, the following gratuity scheme shall be introduced by the Shorrock Mills Co-operative Society for the workmen employed in its canteen :-

(1) On the death of an employee while in service of the canteen, or on his becoming physically or mentally incapacitated for further service - 15 days' basic wages for each completed year of service subject to a maximum of 10 months' basic wages shall be paid to the workman or, if he had died, to his legal representatives, or assignees, or executors, or nominees, as the case may be.

(2) On voluntary retirement or resignation of an employee after 15 years' continuous service in the canteen - 15 days' basic wages shall be paid to him for each completed year of service subject to a maximum of 10 months' basic wages.

(3) On termination of service by the society after 15 years' continuous service - 15 days' basic wages for each completed year of service subject to a maximum of 10 months' basic wages shall be paid to the workmen. But if a workman is entitled to retrenchment compensation under S. 25F, he would be entitled only to retrenchment compensation under S. 25F, or to gratuity under the scheme, whichever is higher.

(4) Wages for the purpose of calculating gratuity will be the basic drawn by the workmen in the month immediately preceding the occurrence of the event entitling him to gratuity.

22. In reference No. 60 of 1958 relating to the Arvind Mills' canteen, there is a demand for paid sealed holidays. On behalf of the society it was stated at the hearing that all sealed holidays granted to the operatives of the mills are being granted to the workmen of the canteen. It was stated on behalf of the union that this was correct. This demand therefore does not survive for adjudication.

23. Each society shall pay Rs. 40 as costs to the union as two office-bearers of the union were present on the dates of the hearing on 29 and 30 August 1958.