

(1997) 05 MP CK 0032
In the Madhya Pradesh High Court
Case No : M.P. No. 4053 of 1998

Van Sangathan Orient Paper Mills

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 01-05-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Payment of Bonus Act, 1965 — Section 11

Citation : (1999) 3 LLJ 480

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : Govind Das, R.K. Gupta and Manisha Gupta, for the Appellant; B.K. Pradhan and U.K. Sharma for Respondent Nos. 1 and 2 and P.D. Gupta, for the Respondent

Judgement

C.K. Prasad, J.—A reference was made by the competent authority u/s 10(1) of the Industrial Disputes Act, 1947, to the Industrial Tribunal, which reads as under:

Vernacular matter omitted.

It means as follows:--

"Whether there is justification for introduction of Production Bonus scheme for the employees of Van Sangathan in view of the prevalent Production Bonus scheme in Orient Paper Mills, Amlai; if yes, what should be the form of the scheme and is to be enforced from which date?

The Industrial Tribunal by its award dated July 28, 1988 held that there is justification for the introduction of production bonus scheme for the workers of the Forest Organisation and Production Bonus scheme be introduced, in case of the workers of the Forest Organisation, from April 1, 1988. The Van Sangathan, Orient Paper Mill, Shahdol (hereinafter referred to as the Management) being aggrieved by the award of the Industrial Tribunal finding justification for the

introduction of Production Bonus scheme, has filed M.P. No. 4953/1988 assailing the same, under Article 227 of the Constitution of India. The Orient Paper Mills Forest Kamgar Union, Shahdol (hereinafter referred to as the Union) aggrieved by the award, whereby Production Bonus scheme has been made effective from April 1, 1988 has preferred M.P. No. 4154/1989, under Article 227 of the Constitution of India. Questions of law as also fact, being overlapping, both the writ petitions are being decided by this common order.

2. According to the Union, it is registered trade Union of the Forest Organisation of the Orient Paper Mill. The strength of the workmen of the Forest Organisation is about 300 and the Orient Paper Mill manufactures papers; and raw material for its use is collected and transported to it by the employees of the Forest Organisation. It is in the case of the Union that the Management has introduced Production Bonus scheme from the year 1965-66 for the employees of the Orient Paper Mill but the employees of the Forest Organisation were excluded from the benefit of the said scheme. According to the Union, Orient Paper Mill at Amlai and Forest Organisation are one establishment and exclusion of the employees of Forest Organisation from the purview of Production Bonus scheme is discriminatory, improper, illegal and unjustified.

3. It is the stand of the Union that the workers of the Forest Organisation are employed directly by the Mills or through their agency of Forest Organisation and are covered by the definition of workers, as defined u/s 2(1) of the Factories Act. According to the Union, the administrative control of the Forest Organisation is with the management of Orient Paper Mill, they have common balance-sheet, administrative control, accounting procedure etc. The officers and the staff of Forest Organisation are transferred from the Mill and vice versa. The President and Board of Directors are common. There is functional integrality in the working of the Forest Organisation with the Orient Paper Mill. In the aforesaid premises, it is the stand of the Union that Production Bonus scheme in vogue in relation to the employees of the Paper Mill should also be applied to the employees of the Forest Organisation.

4. The stand of the Management is that the raw material required for manufacture of paper, is obtained by the Mill at Amlai, through various sources including that of the Forest Organisation. According to the Management, working and service conditions of the employees of the Forest Organisation and of the Paper Mill are different and they are different establishments. It is stated that paper plant situated at Amlai, which manufactures paper is registered as factory under the Factories Act, 1948 and the Forest Organisation, which has its headquarters at Shahdol, is registered under the M.P. Shops and Establishment Act, 1958.

5. The stand of the Management further is that the M.P. Industrial Relations Act, 1960 is applicable to the employees of the Paper Plant at Amlai, while the workmen employed in the Forest Organisation are governed by the Industrial Disputes Act, 1947. According to the Management the activity and the working of

the Forest Organisation is not the same but distinct; collection of bamboos and salai wood is not an integral part of the process of manufacture of paper. In collection of forest produce no manufacturing process for paper is involved and as such, the workers of the Forest Organisation do not come within the definition of worker within the meaning of Section 2(1) of the Factories Act. The staff of the Forest Organisation, according to the Management, is not controlled by the Management of the Paper Mill and the Officers of the companies are transferred and not the officers of the Forest Organisation. According to the Management, the Orient Paper and Industries Ltd. is a company which owns the Paper Mill and Forest Organisation and carries on its business in all its undertakings including the work of the Paper Plant at Amlai and the Forest Organisation at Shahdol. The case of Management further was that introduction of Production Bonus scheme for the employees of the Forest Organisation will increase its financial burden and the same will be against the award passed by the Tribunal on July 18, 1988. The claim of the Union for award of Production Bonus scheme from 1965-66, was also termed as belated which will result into various complications in the matters of accounts.

6. On the basis of the aforesaid pleadings the Industrial Court framed following issues:

1. (a) Whether the employees of the Forest Organisation are directly the employees of the Mill being persons employed for cutting, packing, supervising and transporting the material used in the manufacturing process, are fully covered by the definition of worker of Section 2(1) of the Factories Act ?

(b) Whether the employees of the Paper Plant Mill, Amlai are governed by the M.P.I.R. Act, and employees of the Forest Organisation of the I.D. Act ?

(c) Whether the Forest Organisation and Paper Mill at Amlai are the two departments of one concern and constituted one establishment in the eye of law?

2. Whether there is justification for the introduction of Bonus scheme on the lines of the one in force in the Industry, to the Forest Workers thereof?

3. Whether the introduction of such a scheme will increase the financial burden of the industry.?

4. Whether the Reference is untenable?

5. (a) Whether the relief with retrospective effect will be proper and legal?

(b) If so, the effect?

7. Issues 1(a) to (c) and 2 were answered by the Industrial Tribunal conjointly and it held that as the employees of the Forest Organisation are engaged in the transport of the bamboos used in manufacturing process of the Mill, they are covered by the term worker as mentioned in Section 2(1) of the Factories Act, 1948. It further held that Forest Organisation and Orient Paper Mill at Amlai are two departments of one concern and constitute one establishment. It further

held that the argument that the employees of these undertakings are governed by two different Acts will not in any way take away that right or interest to have the benefit of being the employees of the same establishment. The Industrial Tribunal further found that there is justification for the introduction of Production Bonus scheme for the Forest Organisation who belong to the same establishment.

8. As regards issue No. 4 i.e. competence of reference, the Industrial Court found that by order dated July 19, 1982 the issue was answered against the Management and no further argument was advanced on the same question. Ultimately the Industrial Court held and affirmed that the reference made u/s 10(1) of the Industrial Disputes Act, is proper and maintainable.

9. Shri Govind Das appearing on behalf of the Management submits that the term of reference should be strictly construed and Tribunal cannot go beyond the term of reference. It is submitted that the jurisdiction of the Tribunal, while answering reference is limited to the points specifically referred for its adjudication and the matters incidental thereto but the Tribunal cannot go beyond the terms of reference. It is emphasised that in the present case reference is not cryptic, therefore, the Tribunal could not have considered other documents or evidence to find out the meaning of the reference. It is contended that there is no ambiguity in the order of reference in as much as the expression introduction could not be read as extension in the order of reference. It is further submitted that use of the expression, what should the nature of such scheme would have been redundant, if it was only for the extension of the Production Bonus scheme of the employees of the Forest Organisation. In support of the aforesaid submission learned Counsel has placed reliance on the judgment of the Apex Court in the case of Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Another, and my attention has been drawn to the following paragraph of the said judgment which reads as follows at pp 234-235 :

"Having heard a closely thought out argument made by Mr. Gupta on behalf of the appellant, we are of the opinion that the High Court is right in its view on the first question. The very term of the reference shows that the point of dispute between the parties was not the fact of the closure of its business by the respondent but the propriety and justification of the respondent's decision to close down the business. That is why the references were expressed to say whether the proposed closure of the business was proper and justified. In other words, by the reference the Tribunal was not called upon by the Government to adjudicate upon the question as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the Management. The references being limited to the narrow question as to whether the closure was proper and justified the Tribunal by the very terms of the references had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the Management."

Another decision on which learned counsel has placed reliance is the judgment of

this Court dated December 4, 1996 passed in M. P. No. 2625/1995 and my attention has been drawn to the following paragraph of the Judgment which reads as follows:

" 18. There is no quarrel about the proposition that the Tribunal had no jurisdiction to go behind the terms of reference but in the present case, as stated earlier the very language of the term of the agreement contemplates the justification for re-employment of the ex-casuals on the basis of the agreement. The reference states as to "whether the demand of the Union in view of the agreement dated July 17, 1984 is justified to re-employ the ex-casual workers". Therefore, the justification for employment in view of the agreement was the reference, calling for answer by the Tribunal. The very fact that the dispute referred to the Tribunal was the justification for demand of re-employment, it clearly implies that the Tribunal was required to address this question with reference to the validity of the agreement. There is difference between an agreement for re-employment and the question of justification for re-employment. Accordingly, I am of the view that the validity of the agreement is incidental and implicit in terms of reference and the case relied on by the learned counsel for the petitioner is clearly distinguishable."

10. Shri Pradhan appearing on behalf of the Union submits that to understand the true purport and exact nature of dispute between the Management and the Union, it is obligatory on the part of the Tribunal to look into the pleadings of the parties to cull out the exact dispute between the parties and in case, Tribunal does the same, it will not tantamount to Tribunal going behind the terms of reference. In support of the aforesaid submission learned counsel has placed reliance on the Judgment of the Supreme Court in the case of *The Delhi Cloth and General Mills Co. Ltd. v. The Workmen and Ors.* (1967 I LLJ 23) wherein the Supreme Court laid down the law as follows at p. 431 :

"1. So far as the fourth proposition is concerned, Mr. Chari argued that the Tribunal had to examine the pleadings of the parties to see whether there was a strike at all. In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was nonexistent and that the true dispute was something also u/s 10(4) of the Act it is not competent for the Tribunal to entertain such a question".

11. The authorities relied on by Shri Das, do hold, and in fact it is settled that the Tribunal cannot go behind the terms of reference, but this does not mean that

pleadings of the parties cannot be looked into by the Tribunal for the purpose of understanding the exact nature of dispute. This will not amount to going behind the reference. In that view of the matter the authorities relied on by Shri Das is clearly distinguishable.

12. Shri Das laid much emphasis on the word "Prarambh" in the terms of reference, which according to him cannot mean as extension and in that view of the matter the Tribunal went behind the terms of reference while directing for extension of the scheme for the employees of Forest Organisation. Production Bonus scheme was invoked in the Orient Paper Mill and the employees of the Forest Organisation were demanding the same. Reference was made regarding the justification of the introduction of scheme, which was prevalent in the paper mill. The introduction or extension of the Production Bonus scheme so far as the employees of the Forest Organisation are concerned is one and the same and I do not find any substance in the submission of Shri Das that Tribunal has gone behind the reference while saying that the Production Bonus scheme be made applicable to the employees of the Forest Organisation. This in no way amounts to going behind the terms of reference. Accordingly, the authority relied on by Shri Das is clearly distinguishable.

13. Shri Das, contends that reference u/s 10(1) of the Industrial Disputes Act, 1947 is absolutely incompetent and the necessary corollary thereof, is that the award rendered on such a reference, is completely without jurisdiction. It is submitted that by notification dated October 31, 1960, issued in exercise of the power conferred by Section 1 (3) of M.P. Industrial Relations Act, 1960, the paper and straw board industries have been notified for application of the provision of Madhya Pradesh Industrial Relations Act. Accordingly it is submitted that the provisions of the Madhya Pradesh Industrial Relations Act would be applicable for the settlement of dispute between the Union of Forest Organisation and respondent No. 2. It is submitted that Section 110 of the Madhya Pradesh Industrial Relations Act excludes application of the provision of the Industrial Disputes Act, except Chapter V-A, V-B and V-C and other provisions with respect to lay off, retrenchment compensation, special provision relating to lay off, retrenchment and closure in certain establishment and unfair labour practice. It is submitted that Section 10 of the Industrial Disputes Act finds place in Chapter III of the Act and accordingly provision of Madhya Pradesh Industrial Relations Act shall be applicable, and therefore, reference u/s 10 of the Industrial Disputes Act is incompetent. In support of the aforesaid submission learned counsel has placed reliance on a Judgment of this Court in the case of S. K. M. S. Rajnandgaon v. H. S. Ltd. 1973 M.P.L.J. 269 and my attention has drawn to the following paragraph, which reads as under:

"17. I have already quoted the notification issued u/s 1 (3) of the State Act. By virtue of the notification the State Act applies to undertakings in the "industries" specified in the Schedule to the notification. One of the industries so specified is "Iron and Steel". In a wide sense, Industry of Iron and Steel is capable of

comprising (1) Extraction or Production of raw material. (2) The process of manufacture of production of iron and steel; (3) their distribution. In a limited sense, however, the extraction or production of raw material will not be comprehended within the industry of Iron and Steel, although it may itself constitute a separate industry. As an example of the wide use of the expression "Iron and Steel Industry" reference may be made to an English Act, the Iron and Steel Act, 1953, (1 and 2 Eliz. 2. G. 15) which uses the expression to include the quarrying or mining of iron ore: (See HALSBURY'S LAWS OF ENGLAND 3RD EDITION, VOL. 38, p. 297). On the other hand, industries specified in the first schedule to the Industries (Development and Regulation) Act, 1951, which include industry of Iron and Steel do not comprehend production of raw material See Tika Ramji v. State of U. P. AIR 1996 SC 676 and Harakchand Ratanchand Bantia and Others Vs. Union of India (UOI) and Others, . The point then is whether the notification issued under the State Act specifies the industries in a limited sense or in a wide sense.

The State Act, as expressed in its long title, is an Act to regulate the relations of employees in certain matters, to make provision for settlement of industrial disputes and to provide certain other matters connected therewith; it covers the same field which is covered by the Central Act. The subject matter of the two Acts falls under the concurrent list and as the State Act was assented to by the President, it displaces the application of the Central Act to the industries to which it (the State Act) is applied by notification u/s 1(3). As the Central Act applies to all the industries, its; displacement by the State Act in relation to a particular industry has to be shown by a clear specification of the industry concerned in the notification issued under the State Act. In this background the notification u/s 1(3) of the State Act has to be construed in a limited sense; see R. N. Mishra v. W. Manager, B. and C. 1966 MPLJ60 and Jamul C. Works v. State Industrial Court 1968 Lab IC 594. Further the items specified in the notification by themselves contain an indication that they do not include within themselves raw material. For example, items like "sugar" "Rice Mills" and "Oil Mills" cannot possibly be construed to include within themselves the production of sugarcane, paddy or oil seeds.

It was contended by the learned counsel for the Management that in case of an employer who carries on mining activity for extraction of raw materials to be utilised solely by him in the manufacture of iron and steel and not for sale, the mining activity gets inextricably connected with the production of iron and steel and becomes a part of it. If this argument were to be accepted, the Iron and Steel Industry specified in the notification will have different content in different situations leading to anomalies. For example in case of an employer who carries on mining of iron ore and other minerals for sale the industry carried on by him will not be that of iron and steel and the employees engaged in the mining industry will be governed by the Central Act. But in case of an employer who himself utilises the ore and other minerals in the production of iron and steel the mining activity will be part of industry of iron and steel and even the employees

employed in the mining of the minerals will be governed by the State Act. There is no reason why the workmen engaged in mining should in one case be governed by the State Act and in the other by the Central Act. Such a result could not have been intended by the State Government in specifying the industry of Iron and Steel in the notification.

Having regard to all these considerations, the more reasonable view to adopt is that specification of Iron and Steel Industry by the Government in the notification is in a limited sense and the extraction of Iron ore or other raw materials needed in the manufacture of Iron and Steel is not included in the said industry".

14. Having gone through the Judgment referred to above closely, I am of the view that the Judgment instead of supporting the case of the Management goes against it. In the aforesaid case by the virtue of notification M.P.I.R. Act applied to the Iron and Steel industry and the question was whether the extraction or production of raw material shall be comprehended within the industry of Iron and Steel so as to make the provision of the Industrial Disputes Act, inapplicable to the employees of the mines engaged in extraction or production of raw material. While considering the aforesaid question, the Court speaking through C.P. SINGH, J. as he then was on difference between DAYAL, C. J., and TARE, J. held that there is no reason why the workmen engaged in mining should in one case be governed by the State Act and in the other by the Central Act. It further held that specification of Iron and Steel industry by the Government in the notification is in a limited sense and the extraction of iron ore or other material needed in the manufacture of Iron and Steel is not included in the said industry. Ratio of the aforesaid judgment applies with equal force in the present case. In my opinion, the specification of paper and straw industry by the Government in the notification is in limited sense and the cutting of Bamboos and Salai and other raw materials in the manufacture of paper and straw is not included in the said industry. Thus, I have no hesitation in holding that the extraction of raw materials in manufacture of paper and straw is not included in the said industry and the Judgment relied on, instead of supporting the case of the Management goes against.

15. Shri Das submits that Forest Organisation is no more engaged in the production activities after the nationalisation of Bamboos in the State of Madhya Pradesh, and the Government of Madhya Pradesh itself being engaged in act of cutting, felling, dragging and storing etc., in connection with Bamboos and in that view of the matter employees of the Forest Organisation cannot be said to be engaged in the production activities. In this connection Shri Das has drawn my attention to the statement of witnesses examined by the Union and the Management. It is submitted that union witness Jitendra Singh has stated that the Forest Organisation is a department of Amlai Paper Mills and it transports Bamboos from the Government depot to Amlai Paper Mills. The Forest Organisation does not have any independent trade or business in Bamboos but it

received Bamboos from the Orient Paper Mill. Formerly this organisation was doing cutting of Bamboos, but in the State of Madhya Pradesh this part of cutting Bamboos is being done by the Government. But in Maharashtra even cutting of Bamboos is done by Forest Organisation. The payment is made by the Orient Paper Mill and it is Orient Paper Mill which settles the terms with the State Government. However, the witness examined by the Management has stated the Forest Organisation is not engaged in production after the nationalisation. It is relevant here to state that the Tribunal has held that employees of the Forest Organisation are engaged in the production activities and employees of the Forest Organisation are the employees of the same establishment, known as Orient Paper Mill and they are integral part of the establishment. For holding so, the Tribunal took into consideration that the Forest Organisation does not have any independent trade or business in Bamboos but it receives the Bamboos for Orient Paper Mill. The payment is made by the Orient Paper Mill and the Orient Paper Mill settles the terms with the State Government. It further took into consideration that the Orient Paper Mill gives amenities to the Forest Officers of the organisation, the emoluments are paid by the Orient Paper Mill and the officials of the Forest Organisation are transferred to Orient Paper Mill. It further took into consideration that the service record of the employees of the Forest Organisation is kept in the custody of the Orient Paper Mill. The Tribunal further took into consideration that Forest Organisation is managed by the Orient Paper Mill, and the officers are transferred from Forest Organisation to Orient Paper Mill and vice versa. Taking retrenched employees of the Forest Organisation in the service of Orient Paper Mill was also taken into consideration to hold that the Forest Organisation is the department of the Orient Paper Mill. The Tribunal has also taken into consideration that the payment to the employees of the Forest Organisation is effected by the Orient Paper Mill and the statement of expenditure of the Forest Organisation is sent to the Orient Paper Mill. So far as employees contribution is concerned the Orient Paper Mill sends the name to the Calcutta office and the action is taken by the Paper Mill. Gratuity is paid to the employees of Forest Organisation by the Orient Paper Mill and every month the Forest Organisation submits the account to the Orient Paper Mills besides the furniture, vehicles and stationery is also supplied to the Forest Organisation by the Orient Paper Mill.

16. However, Shri Das points out that the Tribunal while recording the finding that Forest Organisation is a department of Paper Mill did not take into consideration that the Forest Organisation came into existence in 1956 whereas the Paper Mill came into existence in 1965 which in no uncertain term shows that the Forest Organisation is not the department of the Paper Mill. It is further emphasised that it did not take into consideration that the Orient Paper Mill purchases raw material from other sources and only 60 percent of the raw material was supplied during the relevant time and presently only 30 percent is supplied by it, Accordingly it is submitted that the Forest Organisation is not the department of the Paper Mill.

17. It is well settled that this Court while exercising its power under Article 227 of the Constitution of India does not act as a Court of appeal and upsets the findings, of the subordinate Courts or the Tribunals on reappraisal of evidence. It interferes with the finding of the subordinate Court or Tribunal only when it is shown that the finding is perverse, arbitrary and not supported by any material.

18. As enumerated above, the Tribunal on appreciation of the evidence led on behalf of the parties held that the Forest Organisation is the department of the Orient Paper Mill and is engaged in the transport of the Bamboos in the manufacturing process of the mill. In my opinion, the finding recorded by the Tribunal is based on consideration of relevant materials and accordingly the same does not call for interference under Article 227 of the Constitution of India.

19. Shri Das appearing for the Management further submits that the introduction of production bonus scheme is managerial function and the same cannot be a subject matter of reference. In support of the aforesaid submission Shri Das has placed reliance on the Judgment of the Apex Court in the case of Titaghur Paper Mills Co. Ltd. Vs. Its Workmen, and my attention has been drawn to the following paragraph which reads as follows at page 13:..

"Before we go into the question of jurisdiction of Tribunal under the Industrial Disputes Act, 1947 (hereinafter called the Act,), we should like to consider what production bonus essentially is, the payment of production bonus depends upon production and is in addition to wages. In effect, it is an incentive to higher production and is in the nature of an incentive wage. There are various plans prevalent in other countries for this purpose known as Incentive Wage Plans worked out on various basis, for example, Halsey Premium Plan; Bedaus Point Premium Plan, Haynes Manitt System and Emerson Efficiency Bonus Plan; (see LABOUR LAW BY SMITH SECOND EDITION p. 723). The simplest of such plans is the straight piece-rate plan where payment is made according to each piece produced, subject in some cases to a guaranteed minimum wage for so many hours" work. But the straight, piece-rate system cannot work where the finished product is the result of the cooperative effort of a large number of workers each doing a small part which contributes to the result. In such cases, production bonus by tonnage produced, as in this case, is given. There is a base or standard above which extra payment is made for production in addition to the basic wage. Such a plan typically guarantees time wage upto the time represented by standard performance and gives workers a share in the saving represented by superior performance. But whatever may be the nature of the plan the payment in effect is an extra emolument for extra effort put in by workmen over the standard that may be fixed. That is the reason why all these plans are known as Incentive Wage Plans and generally speaking have little to do with profits. The extra payment depends not on extra profits but on extra production. The extra payment calculated on the basis of extra production is in a case like the present where the payment is made after the annual production is known, in the nature of emoluments paid at the end of the year. Therefore, generally speaking,

payment of production bonus is nothing more nor less than a payment of further emoluments depending upon production as an incentive to the workmen to put in more than the standard performance. Production bonus in this case also is of this nature and is nothing more than additional emolument paid as an incentive for higher production. We shall later consider the argument whether in this case the production bonus is anything other than profit bonus. It is enough to say in this case also depends essentially on production and therefore is in the nature of incentive wage".

20. However, Shri Pradhan appearing on behalf of the union, submits that the aforesaid point was not raised before the Tribunal nor before this Court in the writ petition and as such, the said plea cannot be permitted to be raised for the first time, at the time of hearing of the petition. True it is that the aforesaid submission was not raised before the Tribunal. Shri Das however, submits that the only purpose of taking the point in the writ petition is to apprise the other side about the submission which is likely to be made and not put the other side by surprise. It is submitted that the said point was not taken in the writ petition but the same was taken as an additional plea and a copy of the same was served on the counsel of Union much before the argument commenced and in that view of the matter, he is not prevented from raising the said point.

21. Having appreciated the rival submission, I am of the view that the point has been taken by way of an additional plea and the Union was apprised of the same. The point raised does not require investigation of fact and flows from the pleadings of the parties and in that view of the matter, as the Management has given advance notice, the same can be raised in the writ petition. I over-rule the objection of Shri Pradhan.

22. It is contended by Shri Das that once the production bonus scheme is introduced the same becomes a condition of service and the Tribunal may have power in such circumstances to go into the question of change or variance in the scheme but in a case when the production bonus scheme is to be introduced for the first time, the same is a managerial function and cannot be subject matter of industrial dispute. In support of the aforesaid submission learned counsel has placed reliance in the case of M/s. Titaghur Paper Mills (supra) and my attention has been drawn to the following passage, which reads as under at p. 14 :

"18. Let us not tune to the question of; jurisdiction of the Tribunal under the Act to consider a production bonus scheme at all. The argument is that the introduction of a production bonus scheme is purely discretionary with the employer and no Tribunal can impose such a, scheme, Whether there should be increased production in a particular concern is a matter to be determined entirely by the employer and depends upon a consideration of so many complex factors, namely, the state of the, market, the demand for the product, the range of prices, and so on. It is therefore, entirely for the employer to introduce a production bonus scheme or not."

23. However, in the case relied on by Shri Das itself, the Supreme Court sounded a note of caution and it said:

"We are, however, not called upon to decide in this whether a demand for the introduction of a production bonus scheme where there was none before can be made a subject matter of industrial dispute as defined in Section 2(k) of the Act or whether a scheme of production bonus can for the first time be imposed on the employer by a Tribunal under the Act. The problem that is before us is whether the Tribunal under the Act will have jurisdiction to deal with a production bonus scheme in a concern where it has been introduced."

24. Thus, the authority relied on by Shri Das does not answer the question and not in any way supports his case. Here in the present case, I find that Forest Organisation was found to be department of the Paper Mill and the dispute was referred to the Industrial Tribunal. In my opinion, the application of the production bonus scheme in one department and not applying the same in other squarely falls within the expression industrial dispute u/s 2(k) of the Industrial Disputes Act. Accordingly, I negative this submission of Shri Das.

25. Shri Das contends that as the Forest Organisation is not engaged in production, in the absence thereof the production bonus scheme cannot be applied to it. It is submitted that payment of production bonus depends upon the production and is in addition to the wages. As stated earlier, it has been emphasised that the Forest Organisation is no more engaged in the production activities, after the nationalisation of the Bamboos in the State of M. P., it by no stretch of imagination could be said to be engaged in production.

26. It is relevant here to state that on appreciation of material the Tribunal found that the Forest Organisation does not have any trade or business in Bamboos, but it receives Bamboos for the Orient Paper Mills. Formerly this organisation was doing cutting of Bamboos but in the State of M. P., it is presently done by the State of M. P.. It further took into consideration that Orient Paper Mill settles the terms with the State Government, and the payment is also made by it. Various other factors mentioned in the preceding paragraph of this order were taken into consideration to hold that there is functional integrality between the Forest Organisation and the Orient Paper Mill. In case, the finding recorded by the Tribunal is correct, that there is functional integrality between the Forest Organisation and the Paper Mill, it has to be held that, employee of the Forest Organisation are engaged in production.

27. Section 2(k) of the Factories Act defines manufacturing process, same reads as under : "2(k) "manufacturing process" means any process for-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or".

In the case of Lipton Limited and Another Vs. Their Employees, , the Supreme

Court laid down the test to decide whether establishment is one or different and those tests are as under at p. 438 :

(i) If the different units are so connected together or integrated that the payment of bonus to one section of the employees will violate the principle that all workers should, share in the prosperity to which they have jointly contributed, the undertaking must be treated as a whole, and the accounts of the whole undertaking inclusive of all its units must be pooled to see whether the undertaking as a (whole) shows any surplus available for payment as bonus.

(ii) If the different units are so separated or unconnected so that the trade activity of one unit and the contribution made by the labour of that unit to its profit has no connection whatever with the trade activities and profits of the other units the workmen in each unit must rest their claim for bonus only on the profits made by that unit itself, and if there is no surplus available for distribution as bonus out of the profits of their own unit, the workmen of that unit have no claim to bonus, whatever be the profits and surplus in the other units".

In the case of *Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen*, law has been laid down in the following words at page at pp. 499-500 :

"While pointing out that it was impossible to lay down any one test as an absolute and invariable test for all cases it observed that the real purpose of these tests would be to find out the true relation between the parts, branches units etc. This Court however mentioned certain tests which might be useful in deciding whether two units form part of the same establishment. Unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional "integrality" were the test which the Court applied in that case. It is obvious there is an essential difference between the question whether the two units form part of one establishment for the purpose of Section 25E(iii) and the question whether they form part of one single industry for the purpose of calculation of the surplus profits for distribution of bonus to workmen in one of the units. Some assistance can still nevertheless be obtained from the enumeration of the tests in that case. Of all these tests the most important appears to us to be that of functional "integrality" and the question of unity of finance and employment and of labour. Unity of ownership exists ex hypothesi. Where two units belong to a proprietor there is almost always likelihood also of unity of management. In all such cases therefore, the Court has to consider with care how far there is "functional integrality" meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment the employer has actually kept the two units distinct or integrated.

28. Now, I apply the test laid down by the Supreme Court in the facts of the present case. I have no hesitation in affirming the finding of the Tribunal that

there is functional integrality between the forest Organisation and the Paper Mill. The finding of the Tribunal is based on the facts that Forest Organisation has no trade or business in Bamboos, but it receives Bamboos for the Orient Paper Mill. Formerly this organisation was doing cutting of Bamboo but in the State of Madhya Pradesh, this part of cutting bamboos is done by the State Government after nationalisation. The payment is made by Orient Paper Mill and it is Orient Paper Mill which settles the terms with the State Government. The Orient Paper Mill gives amenities to the officers of the Forest Organisation as well as the salary and emoluments are paid by the Orient Paper Mill. The service record of the Forest Organisation is kept in custody of Orient Paper Mill, the officers are transferred to Orient Paper Mill and vice-versa. Taking retrenched employees of the Forest Organisation in the service of Orient Paper Mill was also taken into consideration to hold functional integrality. The Tribunal has also taken into consideration that the payment to the employees of the Forest Organisation is effected by the Orient Paper Mill and the statement of expenditure of the Forest Organisation is also paid to the employees of Forest Organisation by the Orient Paper Mill, and every month the Forest Organisation submits the account to the Orient Paper Mill besides the furniture, vehicles and stationery is also supplied to the Forest Organisation by the Orient Paper Mill.

29. The aforesaid factors led the Tribunal to conclude that there is functional integrality between the Forest Organisation and the Orient Paper Mill. I am of the considered opinion, that in the light of aforesaid factors, this was the only view possible. I concur with the finding of the Tribunal, Once it is held so, the employees of the Forest Organisation shall be deemed to be engaged in production and I, therefore, do not find any substance in the submission of the learned counsel for the petitioner.

30. Shri Das in order to emphasise that there is no functional integrality has pointed out that the employees of the Forest Organisation do not work in the premise of the Orient Paper Mill and therefore, they cannot be said to be involved in manufacturing process. In support of the aforesaid submission learned counsel has placed reliance on Judgment of the Supreme Court in the case of Rohtas Industries Ltd. Vs. Shri Ramlakhan Singh and Others, and my attention has been drawn to the following paragraph which reads as follows at page:

"Reading these provisions together it is quite reasonable and legitimate to hold that a person to be a worker within the meaning of the Factories Act must be a person employed in the premises or the precincts of the factory. As held by this Court in the State of Uttar Pradesh Vs. M.P. Singh, S.P. Sabharwal and R.K. Lahri, field workers who are employed in guiding, supervising and controlling the growth and supply of sugarcane to be used in the factory are not employed either in the precincts of the factory or in the premises of the factory. Hence the provisions of the Factories Act do not apply to them".

In the aforesaid case, the question of maintainability of an application of an employee under the Bihar Shops and Establishments Act was under

consideration. Section 26(2) of the Bihar Shops and Establishments Act provided that only an employee u/s 2(4) of the said Act could file application. Section 2(4) of the Bihar Shops and Establishments Act while defining employees inter alia stated that the employee was not to include persons employed in a factory, who are not workers within the meaning of the Factories Act. In the aforesaid background it was held that the employee who was employed in the waste paper department of the paper factory, manufacturing paper from raw material such as Bamboos, to be connected With the subject of the manufacturing process and accordingly a factory worker and thus, the petition filed by him under the Bihar Shops and Establishments Act was considered to be not maintainable. I am of the opinion, that the Judgment relied on in no way supports the case of the petitioner and in fact the Judgment relied on, instead of supporting the case of the petitioner goes against him, which would be evident from the following paragraph of the said judgment, which reads as under:

"7. The respondent was not employed "in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process". But the question for consideration is whether he was employed in "any other kind of work incidental to or connected with, the manufacturing process or the subject of the manufacturing process". This Court in *State of U.P. v. M.P. Singh* (supra) did not decide as to what was the precise meaning of the expression "subject of the manufacturing process" in Section 2 Clause (1) of the Factories Act. We are called upon to decide this question in this appeal. Raw material used in the manufacturing process for producing paper and its various products, undoubtedly, will be a subject of the manufacturing process, whatever, else may or may not be such subject. If that be so, the respondent was engaged in a work which was connected with the subject of the manufacturing process. And as we see the evidence discussed in the order of the Labour Court, there cannot be any doubt that he was working in the factory premises or its precincts in connection with the work of the subject of the manufacturing process namely, the raw materials. In our judgment, therefore, he was a factory worker within the meaning of Clause (2) of Section 2 of the Factories Act, 1948. Hence he was not an employee within the meaning of the Bihar Act and the petition of complaint filed by him u/s 26 (2) was not maintainable".

31. The authority relied on by the learned counsel for the petitioner, in no way advances the case of the petitioner. As stated earlier, Tribunal found on relevant materials that there is functional integrality between the employees of the Forest Organisation and the Paper Mill and the said finding has been affirmed by me. Merely the fact that the employees of the Forest Organisation are not working in the precincts of the Paper Mill, shall not disentitle them to bonus. Accordingly, I negative this submission of the learned counsel for the petitioner.

32. Now, I advert to the writ petition filed by the Union. As stated earlier, while holding that there is justification for the introduction of production bonus scheme, the Tribunal has directed that the same be applied w.e.f. April 1, 1988.

While doing so, Tribunal found that the prayer of the Union to introduce scheme from 1965-66 is a very much belated claim. It further took into consideration that the accounts and adjustments of the last several years upto 1980-81 have been finalised and the company has settled its affairs on the basis of these finalised accounts. It further took into consideration that the demand of production bonus by the employees of the Forest Organisation is very old demand but during these years this demand for production bonus was not strongly pressed as other demands were fulfilled. The Tribunal held that the scheme was made applicable in the year 1965-66, it was pressed by the members of the Forest Organisation somewhere in the year 1981, i.e. after the gap of 16 years. It also took into consideration that reference was made in the year 1981 and the statement of claim was filed by the party on June 30, 1981 and October 1, 1981 and the preliminary objections were decided on January 19, 1982 and the delay in making award has occasioned because of the parties to the Us and partly systemic. In the opinion of the Tribunal it will make the matter more complicated and may result in reopening of the accounts already settled, if the scheme is introduced from the date claimed by the Union.

33. Taking into consideration, the aforesaid factors Tribunal found it reasonable and just not to give the relief with retrospective effect. Shri Pradhan appearing on behalf of the Union could not point that the discretion exercised by the Tribunal is in any way erroneous. I am of the opinion that the Tribunal on consideration of the relevant material rightly directed for introduction of production bonus scheme w.e.f. April 1, 1988.

34. The Tribunal handed over the award on July 28, 1988 and on the Management's writ petition the operation of the award was stayed by this Court vide order dated December 6, 1988. The employees had to wait for years together to receive the fruits of the award. This Court nearly took a decade to decide the matter. Bonus which ought to have been paid in the year 1988 hopefully be paid in the year 1997. Rupee has devalued all along these years. I cannot compensate the employees to that extent. However, direction for payment of interest to the employees in the facts and circumstances, would be proper direction. Accordingly I direct that the employees shall be entitled to interest at the rate of 12% per annum on the bonus amount.

35. All the submissions made on behalf of the petitioner in both the writ petitions having been negatived, both the writ petitions fail and they are dismissed accordingly. There shall be no order as to cost, in M.P. No. 14154/1989. However, the writ petition filed by the Management, M.P. No.4853/ 1988 is dismissed with cost. Counsel fee Rs. 5000/- Security amount if deposited be refunded to the petitioners.