view of the company's willingness to take them back. The appeal of the workmen on the question of reinstatment fails and is hereby dismissed. We may, however, make it clear that payment made pursuant to the order of this Court will not in any event be refundable or adjustable towards the future wages of those workmen who will be reinstated by the company.

Both the company and the workmen have raised other points in their respective grounds of appeal; but as they have not been pressed before us we need not say anything with respect to them. In these circumstances we are of opinion that both the parties will bear their own costs of this Court.

Appeal No. 317 allowed.
Appeal No. 318 dismissed.

THE MANAGEMENT OF PRAGA INDUSTRIES LTD., COIMBATORE

v.

THE WORKERS

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

Industrial Dispute—Award by consent—Interim increment of wages in lieu of fixation of wage structure—Such award, if open to challenge—Wage structure of piece-rate workmen—Whether entitled to annual increment—Machinery, land, building on lease—Rehabilitation charges, if allowable—Bonus—Calculation of available surplus.

The appellant was the lessee under Praga Industries and took on lease buildings and machinery for five years with option of renewal. The subject matter of dispute for adjudication was with regard to the questions about (1) the quantum of bonus payable to the workmen for the year 1954, and (2) fixation of scale of wages with graded annual increments for different categories of workmen.

In view of the fact that the lease in its favour was due to expire shortly, the appellant had suggested to the Tribunal that the question of classifying the workmen into skilled and unskilled workmen and providing for systematic grades of pay with increments may conveniently be deferred to a future date; the

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respondents agreed to this proposal and so both the parties represented to the Tribunal that they would be satisfied if an interim order was made providing for the increment in the wages of the workmen. Accordingly, the Tribunal refrained from fixing any wage structure, and as an interim measure, ordered increment of wages at 4 per cent. and directed the appellant to grant such an increment every year until the workmen were classified and their pay scales were introduced to reach a particular maximum. The above increment applied to the monthly, time and piece rated workmen.

The appellant challenged the propriety of the course adopted by the Tribunal and contended that the Tribunal was asked to fix a wage structure, but instead it had passed merely an interim order which was irregular.

The appellant also contended that the claim for the additional bonus for the year 1954 by the workmen was not justified as the financial position of the appellant was not satisfactory, and it was in debts and had not even paid rent due to the lessor, and in fact, had ploughed back the amount of rent due into the business as working capital. The appellant also resisted the direction for payment of bonus on the ground that the award involved an unfair distribution of the available surplus and claimed rehabilitation charges for the leased property and machinery and interest on the amount of unpaid rent.

Held, that where the parties themselves represented to the Tribunal that the question of classifying respondents into skilled and unskilled workmen and providing for systematic grades of pay with increments may be conveniently deferred to a future date and they would be satisfied with a reasonable interim order providing for increment in the wages of the workmen, it was not open to the parties to challenge the award based on such representation at a later stage.

That although generally a wage structure with annual increments was not provided for piece rate workers, who are paid for the work they do, the rate of wages fixed for such workers could legitimately be revised on a proper case being made out in that behalf.

Held further, that where an amount earmarked as due for payment for some other purpose was utilised as working capital, it should carry interest, even though shown as liability in the profit and loss account and the same should be taken into consideration for arriving at the surplus available for the purposes of bonus.

That no prior charges for rehabilitation could be allowed where land, machinery and building for business were taken on lease. Where new machinery was purchased the amount of rehabilitation was covered by the depreciation allowed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 226 of 1958.

Appeal by special leave from the award dated May 30, 1957, of the Labour Court, Coimbatore, in Industrial Dispute No. 89 of 1955.

A. V. Viswanatha Sastri and *T. V. R. Tatachari*, for the appellants.

M. S. K. Sastri, for the respondents.

1959. May 8. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—This appeal by special leave arises out of an industrial dispute between the Management of Praga Industries (P) Ltd., (hereafter called the appellant) and its workmen (hereafter called the respondents). The dispute which was referred by the Government of Madras for adjudication to the Industrial Tribunal at Coimbatore covered four items. Two of them were settled by compromise between the parties and the remaining two were the subject-matter of adjudication. They are the question about the quantum of bonus payable to the respondents for the year 1954 and the question of fixing scales of wages with graded annual increments for different categories of respondents. The tribunal has ordered the appellant to pay to the respondents by way of bonus three months' wages. The appellant had already paid one month's bonus and so it had been directed to pay bonus for two months more. In regard to the fixation of the wage structure the tribunal has refrained from fixing any wage structure at present and as an interim measure it has ordered the appellant to grant all its workmen an increment at the rate of 4% and to continue to grant such an increment every year until they are classified and their pay scale is introduced to reach a particular maximum. It is these two directions in the award which are challenged by the appellant in the present appeal. *Gajendragadkar J.*

The appellant is a private limited company carrying on the business of manufacturing nut and plastic buttons in Coimbatore as a lessee under Praga Industries, Coimbatore, which is a partnership firm. The appellant took on lease from the said firm land, buildings

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and machinery belonging to it under an indenture of lease executed on January 15, 1954. Under this deed a monthly rental of Rs. 5,000 has to be paid by the appellant for five years; the lease includes a clause by which a right of renewal is given to the appellant for a period of three years.

The appellant's case was that its financial position was not satisfactory; that it had to borrow an overdraft from the Indian Bank Limited, Coimbatore, under an overdraft account which left the appellant a debtor to the said Bank to the extent of Rs. 48,414 in 1954. The appellant had also not paid the rent due to the lessor for the said year and had in fact ploughed back the said amount of rent of Rs. 60,000 into the business of the appellant as working capital. According to the appellant, under the Full Bench formula the respondents' claim for additional bonus was not justified.

On the other hand the respondents urged that the appellant was making large profits and their claim for bonus was fully justified. The respondents also alleged that it was high time that a proper wage structure was fixed by the tribunal guaranteeing to the respondents the payment of fair wages with fair annual increments with a view to reach specified maximums.

On behalf of the appellant Mr. Viswanatha Sastri has challenged the propriety of the course adopted by the tribunal in making an interim order about the increments in wages of the appellant's employees. The tribunal was asked to fix a wage structure under issue No. 3. Instead it has come out with an interim order which is very irregular, says Mr. Sastri. In our opinion this argument is wholly untenable. It is clear from the award that the appellant itself suggested to the tribunal that the lease in its favour was due to expire within a year and a half and that the question of classifying the respondents into skilled and unskilled workmen and providing for systematic grades of pay with increments may be conveniently deferred to a future date. The respondents agreed to this suggestion, and both parties represented to the tribunal that they would be satisfied if a reasonable interim order

was made providing for increment in the wages of the respondents. That being so, it is not open to the appellant now to contend that the tribunal should have fixed a wage structure and not passed an interim order.

On the merits of the interim order the only objection which has been raised by the appellant before us is in respect of the application of the said order to piece-rate workers. It appears that on October 25, 1955, an agreement had been reached between the appellant and the respondents and by cls. 5 and 6 of this agreement it was settled that an annual increment of 4% of the basic pay for all the monthly-rated and time-rated employees should be given, and that the revised wages should come into force from November 1, 1955. That being so, Mr. Sastri has not challenged the interim order passed by the tribunal in respect of the monthly-rated and the daily-rated workmen. His grievance is that the tribunal was in error in making a similar order in regard to the piece-rated workmen.

It is true that generally annual increments in the wages of piece-rated workers are not provided. These workers are paid by the work which they do though the rates fixed for such payment may be legitimately increased in proper cases; usually a wage structure with annual increments is not provided for such piece-rated workers. It is on this aspect of the matter that Mr. Sastri has laid considerable emphasis. On the other hand, Mr. Joseph Nejedly who gave evidence for the appellant frankly admitted that piece-rate wages had been fixed in 1947 and though there were some changes in them they were insignificant. He also conceded that since 1947 the cost of living had gone up in Coimbatore. These statements make it clear that a case for revising the rates of wages payable to piece-rated workers has been made out asmuch as in the case of monthly-rated or daily-rated workmen. Therefore we think that the appellant cannot successfully challenge the direction issued by the tribunal in regard to the increment of 4% in the case of rates of wages fixed for piece-rated workers. We would, however, like to modify the interim order in regard to piece-rated

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workers by directing that though their rates of wages should be increased at the rate of 4% they should not have the benefit of the annual increment at the said rate until all the workers are are classified and their pay scales are introduced. In other words, we confirm this part of the award with the only modification that future annual increment at the rate of 4% should not be granted to the piece-rated workers.

The next contention raised by Mr. Sastri is in regard to the order made by the award directing the appellant to pay two months' additional bonus to the respondents. It is now well settled that the claim for bonus must be decided by the application of the Full Bench formula. In the application of the formula there are only two items which have given rise to a controversy in the present proceedings. The appellant claimed that he should be allowed 4% interest on Rs. 60,000 either on the basis that this interest would be payable to the lessor since default had been commited in the payment of rent due to him; or on the basis that the said amount had been utilised as working capital and so should carry 4% interest. In our opinion the latter claim is well founded and must be upheld. There is no doubt that the monthly rent of Rs. 5,000 payable to the lessor, though shown as a liability in the profit and loss account, has in fact not been paid to the lessor; and it is also clear that the whole of this amount has in fact been used as working capital by the appellant. Therefore its claim to have interest at 4% on this amount cannot be resisted by the respondents. The tribunal was inclined to dissect this claim month by month and to consider the question of return on the amount month by month. We do not think that it is necessary to adopt such a course in the present case.

The other claim made by the appellant is in respect of improvement and modernisation of its machinery. The appellant claimed Rs. 20,000 under this head. This claim has been rejected by the tribunal, and we think rightly. As we have already observed, the appellant has taken the land, machinery and buildings for its business as a lessee from the Praga Industries, Coimbatore, and so the appellant cannot claim to

rehabilitate any of the said machinery and plant. If the appellant has purchased new machinery in 1954 the amount of rehabilitation which the appellant can claim in respect of the said machinery for 1954 is covered by the depreciation allowed to the appellant. This position is not disputed by Mr. Sastri. Therefore we are satisfied that the appellant is not entitled to claim Rs. 20,000 as a prior charge for rehabilitation.

If the Full Bench formula is worked out in the light of these findings there can be no doubt that the tribunal was justified in directing the appellant to pay additional bonus for two months. It is common ground that, taking the net profit at Rs. 42,726, if the depreciation and the bonus paid for 1953 are added back, the figure of gross profit would be Rs. 69,546. From this figure if the notional normal depreciation, income-tax, return at 6% on paid-up capital and return at 4% on working capital of Rs. 60,000 are deducted, it still leaves a balance of over Rs. 26,000. The three months' bonus, including one month's bonus already paid by the appellant, awarded by the tribunal is in the neighbourhood of Rs. 22,000 but in respect of this bonus the appellant would be entitled to a rebate of income-tax to the extent of Rs. 12,300. That being so, it cannot be said that the order passed by the tribunal involves an unfair distribution of the available surplus.

In the result the appeal substantially fails and the award passed by the tribunal is confirmed with the modification as to the future annual increments in regard to piece-rated workers. In the circumstances of this case we direct that the parties should bear their own costs.

Appeal substantially dismissed; award partially modified.