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UNICHEM LABORATORIES LTD.

v.

THE WORKMEN

February 24, 1972

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[C. A. VAIDIALINGAM, I. D. DUA AND G. K. MITTER, JJ.]

Industrial Dispute—Dearness Allowance—Depreciation reserves whether to be deducted from profits—Concerns with foreign collaboration whether can be compared with purely Indian Companies—Slab system—Classification of grades and fixation of wages—Gratuity—Incentive Bonus Scheme.

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The appellant carried on the business of manufacturing and selling pharmaceutical products in Greater Bombay. In disputes arising between the appellant and the respondents the Industrial Tribunal had to deal with questions relating to dearness allowance, classification of grades and fixation of wages and the incentive bonus scheme as modified by the company. In appeal against the award of the Tribunal,

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HELD : (i) The decisions of this Court in *Gramophone Company Ltd.* v. *its Workmen* and *The Indian Link Chain Manufacturers Ltd.* v. *Their Workmen* show that the Tribunal was justified in computing gross profits without deducting taxation, depreciation and development rebate. The latter decision is directly in point to the effect that provision for depreciation cannot be deducted. [582E., 585B-C]

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Gramophone Company Ltd. v. *Its Workmen,* [1964] II L.L.J. 131 and *The Indian Link Chain Manufacturers Ltd.* v. *Their Workmen,* [1971] 2 S.C.R. 759, applied.

Ahmedabad Millowners' Association Etc. v. *The Textile Labour Association,* [1966] 1 S.C.R. 382, referred to.

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(ii) So long and to the extent that concerns having foreign collaboration are doing business in India and in a particular concerned region there is no reason why they should not be taken into account for purposes of being teated as comparable units, provided that the tests for such purposes as laid down by this Court are satisfied. The object of industrial adjudication is to secure as far as possible uniformity of service conditions among industrial units in the same region. If a concern having foreign collaboration properly satisfies the tests of comparability it would be improper to regard such unit as uncomparable merely on the ground that

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it is a concern with foreign collaboration or interest and that the unit with which it is sought to be compared is entirely of Indian origin and resources. [591A-C]

Chemical Industries and Pharmaceutical Laboratories Limited (Cipla) Bombay v. *Their Workmen,* [1957] I.C.R. Bombay 1206 and *Alembic Chemical Works Ltd. Baroda* v. *Its Workmen* [1967] 1 S.C.R. 652,

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Hindustan Antibiotics Ltd. v. *The Workmen and Ors.,* [1967] 1 S.C.R. 652, relied on.

(iii) On the materials before it the Tribunal was justified in treating M/S. Burroughs Wellcome & Co. as a unit comparable with the appellant.

The fact that Burroughs Wellcome employed a lesser labour force did not deserve much importance because the business performance of the two companies was equal. Once Burroughs Wellcome Co. was treated as a comparable unit the wage scales awarded by the Tribunal could not be considered to be unjustified. [598G-599A-D] A

Workmen of New Egerton Woollen Mills v. *New Egerton Woollen Mills and Ors.*, [1969] II L.L.J. 782, applied. B

(iv) On the facts of the case it was not possible to disagree with the view of the Tribunal that the impact of the Drugs (Price Control) Order will not be such as to affect materially the business prospects of the appellant company. If the Order materially affects the prosperity of the appellant's trade it would be open to it to raise a dispute for the reduction in the wage structure and in case they are able to show that in view of the Drugs (Price Control) Order their financial position has weakened to such an extent that they cannot bear the burden of the wage structure fixed by the present award, the matter may have to be examined on its merits. [598B-C] C

Williamsons (India) Private, Ltd. v. *Its Workmen*, [1962] 1 L.L.J. 302, referred to.

(v) The Tribunal had acted within its jurisdiction in classifying the workmen and fixing the scales of pay after fitting them in particular categories. The objection based on s. 10(4) of the Industrial Disputes Act. 1947 must be rejected. [599E-600B] D

(vi) When the Tribunal raised in the gratuity scheme the ceiling limit from 15 months to 17½ months according to the pattern obtaining in Burroughs Wellcome Company there was no question of principle involved justifying an objection by the appellant company. [600C-D] E

(vii) There were different systems of dearness allowance for the operators and the clerical and subordinate staff in the appellant company. That such a different system of dearness allowance for employees working under the same employer is not warranted is clear from the decisions of this Court in the cases of *Greaves Cotton & Co.* and *Bengal Chemical & Pharmaceutical Works Ltd.* Therefore the Tribunal was justified in devising a uniform scale of dearness allowance applicable to all the employees of the appellant. [600E-F] F

Greaves Cotton and Co. and Ors. v. *Their Workmen*, [1964] 5 S.C.R. 362 and *Bengal Chemical & Pharmaceutical Works Ltd.* v. *Its Workmen*, [1969] 2 S.C.R. 113, relied on.

(viii) From the date of the settlement in 1966 the cost of living index had very rapidly gone up by 220 points. At the time when the demand for revision of wages scales and dearness allowance was made by the Unions and when the reference order was made by the Government, the cost of living index had gone up very high. That clearly showed that the workmen had made out a case for revision of wage scales and dearness allowance. The contention of the appellant that because a system of dearness allowance already existed there should be no revision of the same, could not be accepted. [602C; 601A] G

Workmen of Balmer Lawries and Co. v. *Balmer Lawries and Co.*, [1964] 5 S.C.R. 344 and *Remington Rand of India* v. *Its Workmen*, [1962] 1 L.L.J. 287, followed. H

A (ix) When the slab system of dearness allowance was prevailing in the industry in the region the Tribunal committed no error in introducing a similar pattern in the case of the appellant. [603C-D]

Kamani Metals & Alloys Ltd. v. Their Workmen, [1967] 2 S.C.R. 463, referred to.

B (x) In regard to the Incentive Bonus Scheme the Tribunal had stated that the necessary material for that purpose had not been made available and as such it had not been possible to devise a scheme calculated to afford protection to the incentive earning of a workman at the raised base performance index. This Court could do nothing further in this regard and the result would be that observations made by the Tribunal will have full effect. [604G-H]

C CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1091 to 1093 of 1971.

Appeals by special leave from the award dated April 15, 1971 of the Industrial Tribunal, Maharashtra, Bombay in References (IT) Nos. 20 of 1969, 70 of 1970 and 105 of 1969.

D *V. M. Tarkunde, R. A. Jahagirdar* and *I. N. Shroff*, for the appellant (in all the appeals).

K. T. Sule, Janardan Sharma and *Indira Jaisingh*, for respondent No. 1 (in all the appeals).

E *Urmila Kapoor* and *Kamlesh Bansal*, for respondent No. 2 (in all the appeals).

The Judgment of the Court was delivered by

Vaidialingam, J.—These three appeals, by special leave, F arise out of the Award, dated April 15, 1971 of the Industrial Tribunal, Maharashtra, Bombay in Reference (I.T. Nos. 20 and 105 of 1969 and 70 of 1970).

The main questions that arise for consideration in these appeals relate to the award of Dearness Allowance, Classification of Grades and Fixation of Wages and a direction given by the G Industrial Tribunal regarding the Incentive Bonus Scheme, as modified by the Company. There is also a minor point regarding a particular clause in the Gratuity Scheme as framed by the Tribunal in Reference (I.T. No. 20 of 1969). Though there are certain other matters dealt with in the Award in Reference (I.T. H No. 20 of 1969) they are not the subject of controversy in these appeals.

We will now state the circumstances under which the References came to be made to the Tribunal.

The appellant was started as a proprietary concern in the year 1944 and was later transformed to a public limited Company and registered as such under the Indian Companies Act, 1962. From its inception, the Company has been dealing in the business of manufacturing and selling pharmaceutical products. It had its factory in Jogeshwari in Greater Bombay. At the time of the Reference, the Company was employing about 714 workmen, of whom 558 were operatives and 156 were members of the clerical and subordinate staff. All these employees were covered by the demands comprised in all the References. The wage scales of the workmen had been determined originally in Reference (I.T. No. 23 of 1959). The wage scales of the operatives were as follows :

"Unskilled A . . .	Rs. 1·52—0·09—2·23—0·12—2·93
Unskilled B . . .	1·25—0·06—1·85—0·09—2·30
Semi-skilled A . . .	2·00—0·12—2·72—0·18—3·80
Semi-skilled B . . .	1·76—0·11—2·64—0·15—3·39
Skilled	2·59—0·13—2·85—0·22—3·95—0·30—4·25".

The wage-scales of the clerical and subordinate staff were as follows :

"Junior Chemist . . .	Rs. 120—10—200—12—260
Manufacturing Assistant .	140—10—220—15—310
Store-keepers, Store-Assistants, Stenographers . .	180—10—260—15—350
Junior Clerk . . .	60—8—90—10—140—E.B.—15—215.
Intermediate Clerks . .	75—8—115—12—175—E.B.—15—250.
Senior Clerks . . .	115—10—255—15—315—E.B.—20—395."

In addition to the basic wages, referred to above, the employees were getting dearness allowance, which in the case of operatives was equal to 80% of the revised textile scale of dearness allowance and in the case of clerical and subordinate staff 100% of the revised textile scale of dearness allowance.

The nomenclature of the grades of the operatives was changed by a consent award in Reference (I.T. No. 170 of 1961). The grades and wages as per this award were as follows :

"Unskilled . . .	Rs. 1·25—0·06—1·85—0·09—2·30
Semi-skilled A . . .	1·52—0·02—2·33—0·12—2·93
Semi-skilled B . . .	1·76—0·11—2·64—0·15—3·39
Skilled	2·00—0·12—2·72—0·18—3·39
Highly Skilled . . .	2·59—0·13—2·85—0·22—3·95—0·30—4·25."

The dearness allowance of the operatives and clerical and subordinate staff underwent a change by the award in Reference (I.T. No. 402 of 1963). Under that award the dearness allowance

A of the operatives was increased to 90% of the revised textile scale of dearness allowance from January 1, 1964 and to 95% of the revised textile scale of dearness allowance from July 1, 1964. The dearness allowance of the clerical and subordinate staff was supplemented at different slabs with effect from January 1, 1964 as follows :

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"Basic salary upto Rs. 100 . . .	Operatives' dearness allowance plus Rs. 7·50.
Basic salary of Rs. 101 to 200 . .	Operatives' dearness allowance plus Rs. 15.
Basic salary of Rs. 201 to 300 . .	Operatives' dearness allowance plus Rs. 22·50.
Basic salary of over Rs. 300 . . .	Operatives' dearness allowance plus Rs. 25."

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Though the award prescribed to the clerical and subordinate staff the same rate of dearness allowance of the operatives plus a fixed amount, as referred to above, the Company continued to give them dearness allowance equal to 100% of the revised textile scale of dearness allowance. This was also supplemented with D the fixed amount depending upon the slab of the salary.

There was a settlement on June 24, 1966 between the Company and its employees, in and by which the wages of the operatives and the clerical and subordinate staff underwent a final revision. The wages of the operatives were fixed as follows :

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"Unskilled	Rs. 1·25—0·10—2·75
Semi-skilled B	1·60—0·12—2·32—0·15—3·67
Semiskilled A . . .	1·80—0·15—2·85—0·20—4·45
Skilled	2·10—0·20—3·10—0·25—5·10
Highly skilled . . .	2·75—0·20—3·75—0·25—5·00—0·30—6·50."

F Similarly, the wages of the clerical and subordinate staff were as follows :

"Junior Clerk . . .	Rs. 75—6—105—10—155—15—260—E. B.—17—311.
Intermediate Clerk . .	90—8—130—12—190—15—295—E. B.—18-349.
Senior Clerk . . .	125—10—195—15—270—20—390—E. B—25—440.
G Steno and Storekeeper . .	180—10—260—15—380—E. B.—10—4—460."

The above basic scales in respect of all the categories were again supplemented by dearness allowance as provided for in the award passed in Reference (I.T. No. 402 of 1963). The Company had also an Incentive Bonus Scheme, by virtue of which a large number of operatives were getting on an average an additional sum of Rs. 28/- per month. The Company further revised

from about November 1, 1969 the wage scales of Drivers and Watchmen as follows :

"Drivers . . . . Rs. 70—6—100—9—145—12—205—E. B.—15—250.
Watchmen . . . 45—4—65—6—95—E. B.—8.—135".

The above was the pattern of the wage structure and dearness allowance for the operatives and the clerical and subordinate staff.

The Unions concerned made a demand for introducing the following scheme of dearness allowance in respect of all the workmen with immediate effect :

'Wage slab	When the working class cost of living index figure is in the group of 401—410.	Variation in the dearness allowance for every 10 points rise or fall.
Upto 100	100 per cent	5 per cent
From Rs. 101 to 200 .	50 per cent	2½ per cent
From Rs. 201 and above	25 per cent	1¼ per cent

Minimum dearness allowance Rs. 100. Minimum variation Rs. 5."

They also demanded that the above scheme of dearness allowance was to have retrospective effect from August 1, 1967. In the same demand the Unions required that the workmen should be granted one month's wages for every year of service as gratuity in case of resignation, dismissal, discharge, death or termination of service for any reason. By this demand the Unions required modification of the then existing pattern of payment of dearness allowance at 95% of revised textile scale of dearness allowance to operatives and 100% of revised textile scale of dearness allowance plus Rs. 7.50 to Rs. 25/- paid to the clerical and other staff. The Company did not agree to the demand and in consequence by order dated January 14, 1969 the Government of Maharashtra referred for adjudication to the Industrial Tribunal the demands. This Reference was registered as Reference (I.T. No. 20 of 1969).

The Unions again made a demand for revision of scales of pay as well as the classification of employees, their grades and their fitment in the revised scales of pay. As against the then existing six categories of workmen and their wage scales of the operatives the Unions demanded new classification and gradation into eight grades with new wage scales. Similarly, as against the then existing five grades of the clerical and subordinate staff, the Unions demanded the creation of six categories with enhanced wage scales. These demands again were not accepted by the Company which led to the State Government making a reference on January 9, 1970, which reference was registered as Reference (I.T. No. 70 of 1970).

A The Company some time in the year 1959 had introduced an Incentive Bonus Scheme. This was introduced, according to the appellant, because of the fact that the workmen were not giving a substantial production. The basis of the scheme, introduced by the appellant, was that if the workmen gave only 30% of the 100% production expected of them, their performance would B be considered zero. On the other hand, if they gave production above 30% and upto 100%, they would be eligible for payment of Incentive Bonus which would be from 31 to 100 points. In other words, for the 70 points above the first 30 points, the workmen would get Rs. 50/- as Incentive Bonus which would work out approximately to about Rs. 71.43 per point. The appellant desired that the then existing floor limit of 30% ought to be raised C to 75% without varying the quantum of Rs. 50/- that was originally payable on achievement of 100% production. What was intended was that the 25 points between 75 and 100 points were to be made eligible for payment of Incentive Bonus of Rs. 2/- for each point.

D The Company served a notice of change on the workmen under s. 9A of the Industrial Disputes Act, 1947. As the workmen protested against this change, this led the Government to make a Reference to the Industrial Tribnual for adjudication. This was numbered as Reference, (I.T. No. 105 of 1969).

E The appellant resisted the claims made for revision of dearness allowance and wage scales as well as the modification sought for in the gratuity scheme. The appellant also wanted the Tribunal to uphold the notice of change given by it under s. 9A of the Industrial Disputes Act in respect of the Incentive Bonus Scheme. In particular the appellant contended that it was not a comparable F concern with the units referred to by the Unions and that any modification in the scale of dearness allowance and wages would be beyond its financial capacity. The appellant also relied on the coming into force of the Drugs (Price Control) Order 1970 with effect from May 16, 1970. According to the appellant the wages and dearness allowance paid by it to the workmen were far higher than what were paid by other units in the region. The G Company also referred to the various awards wherein it had been held that it could not be compared with an International Company having branches in Bombay or with foreign concern though incorporated in India. The wage scales had been fixed by Settlement dated June, 24, 1966 and that nothing has happened since the date of Settlement to justify a revision of wage scales and dearness allowance. The appellant further urged before the Tribunal that H the double linking of dearness allowance, as required by the Unions had never been adopted for the Pharmaceutical units in the Bombay region. According to the appellant, the revision

effected regarding the Incentive Bonus Scheme was justified and the amount of 2/- offered per point was much more than the prevailing rate of Rs. 71.43p. per point. It also opposed the revision of the then existing gratuity scheme as demanded by the Unions. According to the appellant the gratuity scheme which was in force had been introduced by a consent award in 1963.

The appellant filed copies of balance sheets and profit and loss accounts from 1962-63 to 1969-70 and various other charts in support of its plea that it will not be able to bear the additional financial burden that would result if the wage scales and dearness allowance are revised as per the demands made by the Unions.

It will be seen from the facts mentioned above that the main controversy between the parties related to the revision of wage structure and dearness allowance. As the demands of the workmen related to regrouping in different grades, the operatives and the clerical and subordinate staff and as this involved a very radical change in the existing pattern of grades, the Tribunal felt that the opinion of an expert should be obtained on the advisibility of the reclassification. In this regard both the Unions and the appellant filed a joint application on December 22, 1970 requesting the Tribunal to appoint Sri N. L. Gadkari, retired Chief Inspector of Factories, Maharashtra State as an assessor. They also prayed that the points mentioned in the application be referred for the opinion of the assessor. The Assessor submitted his report on February 22, 1971, in which he recommended the continuance of the then existing grades.

The Unions, while demurring to the report of the Assessor, requested the Tribunal, by their application dated March 25, 1971 to fix for the then existing five grades the following wage scales :

"Unskilled	Rs. 85—8—125—10—225
Semi-skilled B . . .	100—10—150—12—210—15—285.
Semi-skilled A . . .	120—12—180—15—255—18—345.
Skilled	140—15—215—18—305—20—405.
Highly skilled . . .	225—25—350—30—500—35—675."

The appellant, when the Reference came up for hearing, raised an objection to the selection of wage scale by the Unions for the existing grades of the operatives on the ground that such a selection was not permissible, being contrary to the provisions of s.10(4) of the Industrial Disputes Act. The Unions, ultimately, made it clear to the Tribunal that their demand for revision of wage scales of the existing five grades of operatives is to be as follows :

"Unskilled	Rs. 60—5—85—7—155.
Semi-skilled B . . .	70—6—100—8—180.
Semi-skilled A . . .	85—8—125—10—225.
Skilled	100—10—150—12—210—15—285.
Highly skilled . . .	120—12—180—15—255—18—345."

A It is on the basis of this claim that the question of revision has been dealt with by the Tribunal.

Regarding the financial incapacity pleaded by the appellant, the Tribunal after an analysis of the balance sheets and profit and loss accounts, held that the average net profit of the Company during the years 1965-66 to 1969-70 works out to about B Rs. 1384691/-. It is also of the view that the apprehensions of the appellant regarding the possible impact of the Drugs (Price Control) Order, 1970 are not justified. It is the view of the Tribunal that in spite of the price freeze effected in 1963, the appellant has been doing very good business from 1962-63 to 1969-70. Ultimately, the Tribunal found that the financial condition of the C appellant is quite sound.

Regarding the comparable concerns in the region, the Unions referred to as many as twenty units. One of the units relied on as comparable with the appellant was M/s. Burroughs Wellcome & Co. (India) Private Ltd., Bombay.

D The appellant opposed its being compared with the concerns relied on by the Unions on the ground that those units were either foreign concerns doing business in India or Indian units working in collaboration with foreign concerns. The appellant in turn relied on several other concerns as being comparable with it. The appellant very strongly relied on certain previous awards in sup- E port of its contention that it has been held in those awards that the appellant cannot be compared with foreign concerns or with the concerns working in collaboration with foreign concerns.

The Tribunal, after a consideration of the materials placed before it, in this regard, ultimately, held that M/s. Burroughs Wellcome & Co. (India) Private Ltd., was a unit which could F be considered as a comparable concern with the appellant. The Tribunal having regard to the grades and scales of pay obtaining in M/s. Burroughs Wellcome & Co. (India) Private Ltd., held that the wage scales for the five grades for the operatives of the appellant should be as follows :

"Unskilled	.	.	. Rs. 42—3—71—4—112
Semi-skilled B	.	.	47—3—50—82—4—122
Semi-skilled A	.	.	50—4—90—5·50—134
Skilled	.	.	55—5·50—110—6·50—155·50
High skilled	.	.	72—7—142—8—182—9·50—220."

The Tribunal fixed the following grades and scales of pay for the clerical and subordinate staff :

"Junior Clerks and Laboratory Assistants	.	.	. Rs. 85—7·50—145—10—195—12—259—17—323
Intermediate Clerks	.	.	120—10—200—12—260—15—335—18—353
Senior Clerks	.	.	185—15—305—20—365—25—465"

The Tribunal did not accept the large demand made by the Unions for a general adjustment in increments of the employees. Nevertheless, in view of the revision of the scales of wages, it gave certain directions so that the employees may be fitted in the appropriate revised wage scales. A

The parties very hotly contested the question of dearness allowance as well as the pattern to be adopted. As there were different systems of dearness allowance for the operatives and the clerical and subordinate staff, the Unions desired that a common scheme of dearness allowance on a slab system should be adopted. The Tribunal having regard to the decisions of this Court in *Greaves Cotton and Co. and others* v. *Their Workmen*(1) *and Bengal Chemical & Pharmaceutical Works Ltd.* v. *Its Workmen*(2) held that there was no justification for having two systems of dearness allowance—one for the operatives and the other for the members of the clerical and subordinate staff. Accordingly, the Tribunal held that all the employees should get the same dearness allowance irrespective of the fact whether they were operatives or members of the clerical and subordinate staff. B C D

As the dearness allowance has to be fixed on industry-*cum*-region basis, the Tribunal examined the system of dearness allowance followed in the region by the industries belonging to the pharmaceutical units. The Unions had submitted statements Exs. DU-1 and MU.-1 containing a list of pharmaceutical units, in support of their contention that such units were adopting a slab system of dearness allowance. The Company, on the other hand, referred to certain awards of the Industrial Tribunals in support of its stand that slab system of dearness allowance is not considered as an appropriate mode of providing neutralisation. The Unions also relied on certain awards wherein the slab system of dearness allowance had been introduced by the Industrial Tribunals. Though the Tribunal had held that most of the units referred to in Exs. DU-1 and MU-1, cannot be considered for the purpose of being treated as units comparable with the appellant, nevertheless it held that the practice adopted by those units regarding the grant of dearness allowance can be taken into account as providing a guide regarding the system of dearness allowance adopted in the region. On this basis the Tribunal accepted the statements in Exs. DU-1 and MU-1 and held that the slab system of dearness allowance was prevalent in a large number of units belonging to pharmaceutical industry. In this view, the Tribunal further held that slab system of dearness allowance can be adopted, if the financial burden consequent on the adoption of the said system, can be safely borne by the Company. E F G H

(1) [1964] 5 S.C.R. 352. (2) [1969] 3 S.C.R. 113.

A The Tribunal then proceeded to consider the system obtaining in Burrough Wellcome Company regarding the payment of dearness allowance. The system in the said Company, which was common for operatives as well as the clerical and subordinate staff, was as follows :

B	Basic Salary	Dearness allowance per month at the Bombay working class cost of livig index 491—500.	Variation for points.
	Rs. 1—100	150 per cent	5 per cent
	Rs. 101—200	150 per cent on the 1st Rs. 100.	2½ per cent
C		7½ per cent on the balance.	
	Rs. 201—300	150 per cent on the 1st Rs. 100.	1¼ per cent.
		72½ per cent on the 2nd Rs. 100, and	
		36¼ per cent on the balance.	
D	Minimum Dearness allowance Rs. 101.		Rs. 4

In the said Company the above scale of dearness allowance was however limited only to employees drawing a basic salary upto Rs. 300/- per month. The appellant accepted before the Tribunal that the scheme of dearness allowance obtaining in E Burroughs Wellcome Company would cast a lesser financial burden than the scale of dearness allowance as demanded by the Unions. In fact, the Company had filed two charts Exs. C-12 and C-13, showing the burden which it will have to bear if the scheme of dearness allowance as demanded by the Unions was introduced. The Company had worked out the demands in F different ways and that is why it filed two statements. According to the appellant the additional financial burden will be about Rs. 878125.00 as per Ex. C-12 and Rs. 1252693.00 as per Ex. C-13. The Tribunal is of the view that under Ex. C-13, the Company had taken into account a sum of Rs. 186293.00 payable to some members of the staff drawing a salary of over Rs. 200/- per month and amongst whom were also included 52 chemists. G According to the Tribunal the 52 chemists are not covered by the Reference and therefore the burden will have to be calculated only in respect of the workmen covered by the Reference and to whom dearness allowance is being fixed. On calculation the Tribunal found that about a lakh of rupees payable to 52 chemists and included in Ex. C-13 by the appellant will have to be deduct- H ed from Rs. 1252693.00 Accordingly, it held that as per the calculation of the appellant under Ex. C-13, leaving out the 52 chemists, the total burden will only be Rs. 1152693.00. Taking

into account the tax relief that the Company will get, the Tribunal ultimately held that the additional financial burden that the appellant will have to bear will only be Rs. 555000.00. As it had already held that the average annual gross-profits of the Company are over Rs. 40,00,000.00, the Tribunal held that the Company can easily bear this additional burden. The Tribunal is further of the view that though the financial impact of the Drugs (Price Control) Order, on the business activities of the Company has had to be seen, the impact will not be such as to make the appellant's financial position difficult. For all these reasons, the Tribunal fixed for the operatives and the clerical and subordinate staff of the appellant dearness allowance on a system prevalent in Burroughs Wellcome Company. The system of dearness allowance fixed by the Tribunal is as follows :

Basic salary	Dearness allowance per month at the Bombay working class cost of living index 521—530.	Variation
Rs. 1—100	150 per cent	5 per cent
Rs. 101—200	150 per cent on the 1st Rs. 100. 72½ per cent on the balance.	2½ per cent
Rs. 201—300	150 per cent on the 1st 100 Rs. 72½ per cent on the 2nd Rs. 100. 36¼ per cent. on the balance.	1¼ per cent.
Minimum dearness allowance Rs. 101		Rs. 4.

The Tribunal has further directed that dearness allowance in accordance with the above scheme will be payable only to employees drawing a basic salary upto Rs. 300/- per month.

It will be seen that the Tribunal while adopting the scale of dearness allowance obtaining in Burroughs Wellcome Company, has made a departure in fixing the scale of dearness allowance on the basis of the Bombay Working Class Cost of Living Index 521 to 530. The dearness allowance scheme obtaining in Burroughs Wellcome Company was on the Bombay Working Class Cost of Living Index 491 to 500. The different cost of living index was adopted by the Tribunal in view of the fact that the appellant was paying incentive wages to its operatives and with a view to lessen the financial burden on the Company.

Another feature of the scheme adopted by the Tribunal is that it puts a ceiling on the employees drawing basic wages upto

A Rs. 300/- per month alone being eligible for dearness allowance, whereas under the practice originally obtaining in the Company there was no such limit. The Tribunal held that the revised wage scales and dearness allowance would be effective from October 1, 1969 and directed the Company to pay the arrears within three months from the date of the Award becoming enforceable. At B this stage it may be mentioned that the appellant is not challenging this direction regarding the date from which the wage scales and dearness allowance are to take effect, though it very vehemently attacks the fixation of the scale of revised wage scales and dearness allowance by the Tribunal.

C Regarding gratuity, the Company had already a scheme which had been introduced under the Settlement Award in Reference (IT) No. 141 of 1962. It is not necessary to set out the scheme that was prevalent in the Company because the only objection of the appellant to the revised scheme evolved by the Tribunal is in respect of raising the ceiling from 15 months to 17½ months. The demand in this regard by the Unions was that the ceiling D should be raised from 15 months basic wages to 20 months basic wages. However, the Tribunal did not accept the claim of the Unions *in toto*. On the other hand, it adopted the practice obtaining in the Burroughs Wellcome Company and accordingly fixed the ceiling at 17½ months basic wages.

E Regarding the notice of change issued to the workmen by the appellant under s.9A of the Industrial Disputes Act proposing to alter the existing floor limit of 30% to 75% in the Incentive Bonus Scheme, the Tribunal on the joint application of the parties dated April 10, 1970 appointed on April 28, 1970 Sri B. Tulpule, as Assessor to examine the question of revising the existing scheme of Incentive Bonus. The Assessor submitted his report on August F 27, 1970 making the following recommendations :

"(1) The base performance index for all sections/ in the Company's factory should be revised and raised to 60 per cent.

(2) Consequent upon the revision of the base index G as above, an amount of Rs. 1.00 per day should be added to the basic wages of the workers, this addition being independent of any other revision of the wage structure that the Tribunal may decide upon.

(3) The revised rates of incentive should continue H beyond 100 per cent performance."

Though the Unions generally accepted the recommendations, the appellant was opposed, particularly to the second and third

recommendations. The Tribunal, after a consideration of the objection, is of the view that recommendations Nos. 2 and 3 were beyond the scope of the terms of reference made to him. Therefore, those two recommendations were negatived. Regarding the first recommendation, it is stated by the Tribunal that the Unions accepted the same and that the Company also was not opposed to that suggestion made by the Assessor regarding the raising of the base performance index to 60%. In dealing with this aspect the Assessor in his report had stated as follows :

> "If the base index of any incentive scheme is raised from X to Y, the workers will stop getting the incentive earnings which they used to get for the performance range from X to Y. This is also the main anxiety expressed by both the Unions in the present case. At the outset I asked the management whether the implication of their proposed change was such a reduction in the workers' total pay packet, at any given level of performance. The management categorically assured me that that is not their intention. Their purpose in proposing the change is stated by them to induce workers to raise their performance above the prevailing level."

The Tribunal in its Award had stated that the matters mentioned in the above paragraph including the assurance stated to have been given by the appellant were not denied. Therefore, the Tribunal, in view of the common measure of agreement between both the parties regarding the first recommendation is of the view that if the pay packet of the workman is to be protected at the wage raise base index performance of 60%, some scheme may have to be worked out. But as the necessary materials for the purpose of evolving a scheme were not available, the Tribunal has thrown out a suggestion that the said question should be dealt with by the appellant in consultation with the Unions and frame a scheme by common consent, if possible. Accordingly, the Tribunal left the matter to the parties to deal with the matter with the observation that if it is found that no scheme could be framed by consent, the Unions will be free to raise any dispute that may be available to them in that regard.

We have exhaustively referred to the questions referred to the Tribunal as well as the decision of the Tribunal on those points. In these appeals, as mentioned earlier, the controversy relate to : (1) Scale of Dearness Allowance; (2) Fixation of Wage Scales, Classification and Grades; (3) Raising of the ceiling to 17½ months basic wages in the gratuity scheme; and (4) the direction given by the Tribunal regarding the Incentive Bonus Scheme.

A As the main points in great controversy between the parties before us relate to the pattern of dearness allowance and the classification and grades of employees and the fixation of the revised wage scales, we will take up for consideration those matters.

The very first objection of Mr. Tarkunde, learned counsel B for the appellant is regarding the manner of ascertaining 'gross-profits when revising the wage scales and awarding dearness allowance. We have already pointed out that the Tribunal has proceeded on the basis that the average annual gross-profits of the Company are over Rs. 40,00,000.00. The appellant had submitted balance sheets and profit and loss accounts for the year C 1962-63 to 1969-70. It is enough to refer to the particulars that could be gathered for the five preceding years, namely, 1965-66 to 1969-70. For those years the figures are as follows :

Particulars	1965-66	1966-67	1967-68	1968-69	1969-70
Paid-up capital	4500000	4500000	4500000	5400000	5400000
Reserves and Surplus	2152186	2925376	4421515	4785697	5714988
D Sales	21997640	23866647	30359380	32994456	37152031
Depreciation	544919	555035	784824	1111775	916719
Development rebate	97242	68266	105840	110858	144511
Provision for taxation	1915000	1590300	1850500	1698500	1639000
Net Block	4601566	4905509	5458212	5745997	7375386
Net Profit	954591	1443489	1597094	1604501	1323779

From the above statement it will be seen that the average net E profits work out to Rs. 1384691.00 The net profits have been arrived at, by the Company after deducting taxation, depreciation and development rebate. It is on the basis of the net profits so arrived at that the appellant appears to have urged before the Tribunal that the wage scales and dearness allowance are to be fixed. The Tribunal rejected this contention. On the other hand, F the Tribunal has held that when considering a revision of wage structure what is to be taken into account is not the net profits but gross profits without any deductions having been made for taxation, depreciation and development rebate. It is on that basis that the Tribunal held that the average gross-profits of the Company exceed Rs. 40,00,000.00.

G The gross-profits without deducting taxation, depreciation and development rebate for the years 1965-66 to 1969-70 will be approximately as follows :

Year	Gross-profits
	Rs.
"1965-66	35,11,752
H 1966-67	36,57,090
1967-68	43,37,698
1968-69	45,25,134
1969-70	40,24,009"

From the above it will be seen that the figure of Rs. 40,00,000.00 arrived at by the Tribunal as average annual gross-profits appears to be *prima facie* correct. A

Mr. Tarkunde, learned counsel for the appellant found considerable difficulty in challenging the view of the Tribunal that gross-profits are to be arrived at without decucting taxation and development rebate. He rather strenuously urged that there is absolutely no warrant for arriving at gross-profits without deducting depreciation. B

On the other hand, Mr. K. T. Sule, learned counsel for the respondent No. 1, whose contentions have been adopted by Mrs. Urmila Kapoor, learned counsel for the second respondent, pointed out that the approach made by the Tribunal is correct and is also supported by the decisions of this Court. C

Mr. Tarkunde referred us to sections 205 and 211 of the Companies Act, 1956, as well as Part I, Schedule VI therein. We do not think it necessary to refer to those provisions as, in our opinion, they have no relevance or bearing when considering a revision of wages and award of dearness allowance under industrial adjudication. Those provisions are intended for a totally different purpose. D

We will presently show, by reference to the decisions of this Court that the Tribunal was justified in computing gross-profits without deducting taxation, depreciation and development rebate. In view of the decisions, to which we will immediately refer to. Mr. Tarkunde was prepared to accept the position that, at any rate, taxation and development rabate cannot be deducted, but he still maintained that depreciation has to be deducted. E

In *Gramophone Company Ltd.* v. *Its Workmen*(1), this Court, in dealing with a gratuity scheme, had to consider the principles applicable for ascertaining the financial capacity of an employer. In that decision the employer contended that before the real profit for each year can be arrived at, the provisions made for taxation and for development reserves should be deducted. On this basis, it was further contended that if these deductions are made, there will not be any profit left which will enable the Company concerned to frame a gratuity scheme. This claim for deducting taxation and development rebate reserves was negatived by this Court as follows : F G

> "When an industrial tribunal is considering the question of wage structure and gratuity which in our opinion stands more or less on the same footing as wage-struc- H

(1) [1964] 2 L.L.J. 131.

A ture, it has to look at the profits made without considering provision for taxation in the shape of income-tax and for reserves. The provision for income-tax and for reserves must in our opinion take second place as compared to provision for wage structure and gratuity, which stands on the same footing as provident fund which is
B also a retiral benefit."

It was further observed that if an industry is in a stable condition and the burden of provident fund and gratuity does not result in loss to the employer, that burden will have to be borne by the employer, like the burden of wage-structure in the interest of social
C justice. It was finally held that the contention on behalf of the Company therein that provision for taxation and provision for reserves should take precedence over provision for gratuity cannot be accepted.

From the above decision it is clear that : (1) Fixation of wage-structure stands more or less on the same footing as framing of a
D gratuity scheme and the principles applicable for ascertaining the profits are the same : (2) Provision for taxation and provision for reserves cannot take precedence over for gratuity and fixation of wages; and (3) The provision for income-tax and for reserves must take second place as compared to provision for wage-structure and gratuity.

E

The above decision categorically rules out any deduction of taxation. It also excludes from deduction all provision for reserves which will take in depreciation reserve also.

But, Mr. Tarkunde contended that the above decision is an authority for the proposition that the only two items that could be
F deducted are provision for taxation and provision for development rebate reserve. If so, the counsel urges that the deduction of depreciation reserve as claimed by the appellant is justified and that the Tribunal erred in declining that item to be deducted.

We are not inclined to accept this contention of Mr. Tarkunde.
G The above decision is, in our opinion, an authority for the proposition that the provision for taxation and provision for reserves, which expression will take in depreciation reserve also, cannot be deducted for the purpose of computing the profits. At any rate the said decision had no occasion to consider whether depreciation reserve can be deducted or not. We have already pointed out that the
H only claim made by the appellant therein was for deducting provision for taxation and for development rebate reserve and that claim was rejected. Therefore, looked at from any point of view, the above decision is certainly not in favour of the contention of Mr.

Tarkunde that depreciation reserve has to be deducted before arriving at profits. A

In *The Indian Link Chain Manufacturers Ltd.* v. *Their Workmen*(1), this Court had occasion to consider the principles applicable to ascertain the financial capacity of a company in fixing wage scales and dearness allowance and framing of a gratuity scheme. The principle applicable was stated as follows : B

> "It is pertinent to notice that gratuity and wages in industrial adjudication are placed on the same footing and have priority over Income-tax and other reserves, as such in considering the financial soundness of an undertaking for the purposes of introduction of a gratuity scheme the profits that must be taken into account are those computed prior to the deduction of depreciation and other reserves." C

The decision in *Gramophone Company* v. *Its Workmen*(2) was quoted with approval in this decision. The Company in that case had calculated profits after deducting depreciation. This method was deprecated by this Court as follows : D

> "All these profits it may be mentioned are computed after deducting depreciation and this should be taken into account in considering the desirability of formulating a gratuity scheme for the Appellant." E

In the end the provision made for depreciation and which had been deducted by the Company for calculation of profits was added back.

From the above decision it is clear that profits are to be computed prior to the deduction of depreciation and other reserves. The said decision directly holds that provision for depreciation and other reserves cannot be deducted in computing profits to be ascertained for framing a gratuity scheme. This decision again reiterates the legal position that gratuity and wages in industrial adjudication and placed on the same footing and have priority over Income-tax and other reserves. In fact, as pointed out by us earlier, provision made for depreciation and which had been deducted by the Company for arriving at profits was added back by this Court. F G

Mr. Tarkunde urged that this Court in *The Indian Link Chain Manufacturers Ltd.* v. *Their Workmen*(1) has misunderstood and misinterpreted the earlier decision in *Gramophone Company Ltd.* v. *Its Workmen*(2). According to the counsel the error committed by this Court was on proceeding on the basis that the decision in H

(1) [1971] 2 S.C.C. 759. (2) [1964] 2 L.L.J. 131.

A *Gramophone Company Ltd.* v. *Its Workmen*(1) has laid down that depreciation reserve should not be deducted in computing the profits available for framing a gratuity scheme or when fixing a wage scale.

We have no hesitation in rejecting this contention of Mr. Tar-
B kunde. We have already expressed our views regarding the scope of the decision in *Gramophone Company Ltd.* v. *Its Workmen*(1) and no error has been committed by this Court in *The Indian Link Chain Manufacturers Ltd.* v. *Their Workmen*(2). On the other hand, the latter decision is directly in point to the effect that provision for depreciation cannot be deducted.

C We may also refer to the observation of this Court in *Ahmedabad Millowners' Association Etc.* v. *The Textile Labour Association*(3) that ". . . . . it is the figure of gross-profit which is more important, because it is not disputed that wages payable to the employees are a first charge, and all other liabilities take their place after the wages."

D

Mr. Tarkunde referred us to the statements contained in certain leading text books on principles of Accounting, Book Keeping and Accounts and Accountancy regarding the nature of depreciation reserve. In "Principles of Auditing by F. R. M. De Paula, 8th Edition," it is stated that the main object of providing for depre-
E ciation of wasting assets is to keep the original capital intact. In "Balance Sheets, how to read and understand them, by Phillip Tovey,3rd Edition" the distinction between a "Reserve" and "Depreciation" has been stated. The author says that depreciation should be written of before arriving at the year's profit and that reserve is built up by setting aside portions of the profits itself. The author proceeds to state that depreciation represents the estimated
F wear and tear which will ultimately reduce the property and plant to scrap value. In "Book-Keeping and Accounts" by Cropper, Morr's and Fison, 19th Edition, when dealing with the Trial Balance, Trading and Profit and Loss Accounts, it is mentioned that depreciation is the term employed by the Accountants to indicate the gradual deterioration both in the value and the usefulness
G of those assets which, by reason of their nature and uses, steadily decline in value.

Again in "Accountancy" by William Pickles, 3rd Edition the author has defined "Depreciation" as the permanent and continuing diminution in the quality, quantity or value of an asset. It is further stated that the provision for depreciation does not depend
H upon what the business can afford, as the debit therefor is an

(1) [1964] 2 L.L.J.131. (2) [1971] 2 S.C.C. 759.
(3) [1966] 1 S.C.R. 382.

essential one, constituting not an appropriation of, but a charge against, profits for the period in question.

Based upon the above statements contained in the text books referred to above, Mr. Tarkunde urged that the principle in Accountancy is that depreciation must be deducted before ascertaining the profits.

In our opinion, the above statements may have considerable bearing in the preparation of profit and loss accounts having due regard to the provisions of the Companies Act and Mercantile usage; but they have no bearing on the question of fixation of wage structure and dearness allowance in an industrial adjudication.

From what is stated above, it follows that the Tribunal was justified in arriving at gross-profits without deducting the provision for Depreciation. As already mentioned by us, Mr. Tarkunde has accepted that the Tribunal was justified in not deducting the provision made for taxation and development rebate. The result is that the average gross-profits of the appellant being about Rs, 40,00,000.00, as held by the Tribunal, is correct.

In the fixation of wages and dearness allowance the legal position is well-established that it has to be done on an industry-cum-region basis having due regard to the financial capacity of the unit under consideration—vide *Express Newspapers (Private) Ltd.. and Another* v. *The Union of India and others*(1), *Greaves Cotton and Co. and others* v. *Their Workmen*(2), and *Bengal Chemical & Pharmaceutical Works Ltd.* v. *Its Workmen*(3).

It has been further stated in *Greaves Cotton and Co. and others* v. *Their Workmen*(2) as follows :

> "The principle therefore which emerges from these two decisions is that in applying the industry-cum-region formula for fixing wage scales the Tribunal should lay stress on the industry part of the formula if there are a large number of concerns in the same region carrying on the same industry; in such a case in order that production cost may not be unequal and there may be equal competition, wages should generally be fixed on the basis of the comparable industries, namely, industries of the same kind. But where the number of industries of the same kind in a particular region is small it is the region part of the industry-cum-region formula which assumes importance....."

(1) [1959] S.C.R. 12. (2) [1964] 5 S.C.R. 362
(3) [1969] 2 S.C.R. 113.

A It has been further emphasised in *Ahmedabad Millowners' Association etc.* v. *The Textile Labour Association*(1) that industrial adjudication should always take into account, when revising the wage structure and granting dearness allowance, the problem of the additional burden to be imposed on the employer and ascertain whether the employer can reasonably be called upon to bear B such burden. The principles to be borne in mind have been stated in the said decision as follows :

> "It is a long-range plan; and so, in dealing with this problem, the financial position of the employer must be carefully examined. What has been the progress of the industry in question; what are the prospects of the C industry in future; has the industry been making profits; and if yes, what is the extent of profits; what is the nature of demand which the industry expects to secure; what would be the extent of the burden and its gradual increase which the employer may have to face ? These and similar other considerations have to be carefully weighed before D a proper wage structure can be reasonably constructed by industrial adjudication....."

As pointed out in *Greaves Cotton and Co. and others* v. *Their Workmen*(2), one of the principles to be adopted in fixing wages and dearness allowance is that the Tribunal should take into account the wage scale and dearness allowance prevailing in comparable E concerns carrying on the same industry in the region. The factors which have to be taken into account for ascertaining comparable concerns have also been laid down by this Court.

In *Workmen of Balmer Lawrie and Co.* v. *Balmer Lawrie and Co.*(3) those principles have been stated as follows :

F "Besides, it is necessary to emphasise that in dealing with the comparable character of industrial undertakings, industrial adjudication does not usually rely on oral evidence alone. This question is considered in the light of material fact and circumstances which are generally proved by documentary evidence. What is the total capital invested by the concern, what is the extent of its G business, what is the order of the profits made by the concern, what are the dividends paid, how many employees are employed by the concern, what is its standing in the industry to which it belongs, these and other matters have to be examined by industrial adjudication in determining the question as to whether one concern is com- H parable with another in the matter of fixing wages. Now,

(1) [1966] 1 S.C.R. 382. (2) [1964] 5 S.C.R. 362.
(3) [1964] 5 S.C.R. 344.

it is obvious that these questions cannot be decided merely on the interested testimony either of the workmen, or of the employer and his witnesses." A

In *Workmen of New Egerton Woollen Mills* v. *New Egerton Woollen Mills and others*(1), the above principles have again been reiterated. B

From the decisions, referred to above, it follows that two principal factors which must weigh while fixing or revising wage scales and grades are : (1) How the wages prevailing in the establishment in question compare with those given to the workmen of similar grade and scale by similar establishments in the same industry or in their absence in similar establishments in other industries in the region; and (2) What wage scales the establishment in question can pay without any undue strain on its financial resources. The same principles substantially apply when fixing or revising the dearness allowance. C

The question is whether the Tribunal has adopted the above principles when revising the wage scales and dearness allowance in the case of the appellant. D

The Unions had relied on as many as twentyone concerns located in the region of Greater Bombay and belonging to the same pharmaceutical units of industry as units comparable with the appellant. E

The appellant opposed its being compared with those concerns on the ground that the units relied on by the Unions were companies having foreign collaborations or connections, and as such possessing several advantages. The appellant in turn relied on several concerns in the region as comparable units. F

Before we refer to the concerns relied on by the Unions and the appellant as comparable concerns, it is necessary to deal with an objection raised by Mr. Tarkunde that no foreign unit doing business in India or no unit in India doing business in collaboration with a foreign concern, can ever be considered for purposes of comparison. According to the appellant such concerns have distinct advantages of international research facilities, reputation in business which enables such concerns to market their products more easily and thus enable them to pay higher wages to their employees. In view of the special technical facilities, that may be available to them, their output will be far higher though the number of employees will be much less, and as such they will be able to pay to their lesser number of employees higher wages. In this connection Mr. Tarkunde relied on certain awards of the Industrial Tribunal G H

(1) [1969] 2 L.L. J. 782.

A wherein it is held that the companies having foreign collaboration though in the same region and in the same industry, cannot be considered for the purposes of comparison with purely local units.

On the other hand Mr. Sule, has opposed the above position and urged that the question as to who is the employer, is absolutely B immaterial so long as the tests for the purposes of comparability, as laid down by this Court, are satisfied and the capacity to bear the financial burden is established. We will deal with aspects in the first instance.

It must be stated at the outset that the Unions placed reliance on certain information contained in the prospectus of the Company C and certain statements contained in the book "Indian Pharmaceutical Industry" published in 1963 and 1969, to show that the appellant concern is also one which has foreign collaboration and as such it is to be ranked as a concern with foreign attachment. has recorded a finding in favour of the appellant that it is not a unit having foreign collaboration. Therefore, this finding is in D favour of the appellant.

The question that now arises for consideration is whether in law there is any objection or prohibition in an industrial tribunal, when dealing with comparable units in a region from taking into account concerns having foreign collaboration. It is no doubt true that some of the concerns relied on by the Unions are concerns working E in collaboration with foreign firms.

In *Chemical Industries and Pharmaceutical Laboratories Limited (Cipla) Bombay* v. *Their Workmen*(1), it was held by the Industrial Tribunal that the Cipla cannot be compared to Glaxo Laboratories, Raptakos Brett and other pharmaceutical concerns F which are either subsidiaries of foreign concerns or are closely linked with them. It was further held that if any comparison could be made, it can only be with concerns like Kemp & Company. Sandu Pharmaceutical, Fair Deal Corporation, Edison Continental Laboratories, Bengal Chemicals and such other indigenous concerns.

G Again in *Alembic Chemical Works Ltd. Baroda* v. *Its Workmen*(2), the Tribunal held that Alembic cannot be compared to concerns like the Glaxo Laboratories and others who have associations in different degrees and forms with certain foreign concerns of international repute.

On this reasoning the Tribunal relied more on the scales of H wages prevailing in concerns like the Jhandu Pharmaceutical, Cipla, Kemp & Co., and such similar concerns although it held that

(1) [1957] I.C.R. Bombay, 1206. (2) [1958] I.C.R. Bombay, 1305.

Alembic is a much bigger concern than the said units. It must be stated that in both these awards, concerns with foreign collaboration have been eliminated from consideration on the ground that they cannot be regarded as comparable concerns and to that extent they support Mr. Tarkunde's contention. A

In Reference (IT) No. 223 of 1959, which related to the appellant Company, the workmen placed reliance on Indian units of foreign concerns for being treated as comparable units. The appellant, however, pointed out that those units which have international fame and repute in world market were in a position to sell their products more easily and profitably and hence they cannot be treated as comparable units. The Tribunal, no doubt, accepted the contention of the appellant that the Unions had selected some of the bigger concerns for comparison and held that it would be more appropriate if the appellant is placed somewhere in between the bigger and smaller concerns. In this view the Tribunal took a fair cross-section of the industry and fixed the wages having regard to the financial capacity of the appellant. B C D

Again in Reference (IT) No. 402 of 1963, relating to the appellant, wherein the dearness allowance was revised, the appellant had contended that it should not be compared with the units like Ciba, Dumex, Glaxo, Sandoz and the like. The Tribunal held that the appellant cannot be compared with international pharmaceutical units having branches in Bombay or with foreign concerns like Glaxo, Ciba, Sandoz etc., which though incorporated in India are subsidiaries of foreign companies having all the advantages of connection with respect of home companies in Europe and America. The Tribunal referred to the award in Reference (IT) No. 223 of 1959 and held that a fair cross-section of the industry has to be taken into account for fixing a scale of dearness allowance, which will be within the financial capacity of the appellant. But, however, the Tribunal held that the appellant is a firm of good repute and standing and that it has very fair prospects. Though in Reference (IT) No. 223 of 1959, the Tribunal did not specifically eliminate from consideration units having foreign collaboration as such, nevertheless, in Reference (IT) No. 402 of 1963, the Tribunal has held that the appellant cannot be compared with international pharmaceutical companies having branches in Bombay or with concerns, though incorporated in India, are subsidiaries of foreign companies. E F G

From what is stated above, it is no doubt true that in the three awards, one of which specifically relates to the appellant, concerns having foreign collaboration have been eliminated for purposes of comparison. But no legal principle on the basis of which such a decision has been arrived at has been stated in any of these awards. H

A In our opinion, so long and to the extent that concerns having foreign collaboration are doing business in India and in a particular concerned region, we do not see any reason why they should not be taken into account for purposes of being treated as comparable units, provided the tests for such purposes as laid down by this Court are satisfied. No doubt some of those concerns may be B having an advantage in various matters. But merely because that they possess such advantage in the field of business is not a circumstance for eliminating such concerns for purposes of comparability. The object of industrial adjudication is, as far as possible, to secure uniformity of service conditions amongst the industrial units in the same region. If a concern having foreign collaboration properly C satisfies the tests of comparability, it would be improper to regard such unit as uncomparable merely on the ground that it is a concern with foreign collaboration or interest and that the unit with which it is sought to be compared is entirely of Indian origin and resources.

D The object of Industrial Law is to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life with a view to bring about industrial peace which would in turn accelerate productivity of the country resulting in its prosperity. The prosperity of the country, in its turn will help to improve the condition of labour. The principles regarding fixation of wage scales and dearness allowance have been laid down E in several decisions by this Court and they apply equally to all industries irrespective of the character of the employer. The worker is interested in his pay packet and given reasonable wages, he can be expected to be a satisfied worker. There is no justification from the stand point of view of the employees for fixing different wage scales merely because of the fact that some workmen are in the F employ of purely local concerns while some others are in the employ of units though in the same region, working in collaboration with foreign concerns. As the paramount consideration is the interest of the worker, the character of the employer is irrelevant, provided the latter's financial capacity to bear the burden is established. In the ultimate analysis the character of the employer or the destination G of profits has no relevance in the fixation of wages and dearness allowance.

We are fortified in the above view by the decision of the Constitution Bench of this Court in *Hindustan Antibiotics Ltd.* v. *The Workmen and others*(1). In that case on behalf of the appellant it was urged that as it was a government company in the public H sector, the principles governing the fixation of wages applicable to companies in the private sector do not have any relevance. On

(1) [1967] 1 S.C.R. 652.

the other hand, on behalf of the workmen it was contended that in fixing the wage structure including dearness allowance, the question, who is the employer, is irrelevant and that only the needs of the employee are of paramount importance. The contention on behalf of the workmen was accepted by this Court and it was held that the same principles that have been laid down by the industrial adjudication and the courts regarding the fixation of wage scales and dearness allowance in respect of companies in the private sector apply with equal force to companies in the public sector also. It was further held that in the application of the industry-cum-region principle to be adopted to distinction can be made between one unit and another in the same industry in the fixation of wage scales provided the test of financial capacity is satisfied. It was further held that by and large the acceptance of the principle of industry-cum-region will be more conducive to industrial relations and that the same principles evolved by the industrial adjudication in regard to private sector undertakings will govern those in the public sector undertakings having a distinct corporate existence.

Though the decision cited above had to deal with a claim for differentiation being made on behalf of a company in the public sector and which claim was rejected, in our opinion, the basic principle underlying the said decision will apply even with respect to the question whether the units, having collaboration with foreign concerns can be taken into account for purposes of comparison. In our opinion, the above decision warrants the conclusion that such units having foreign collaboration or foreign companies doing business in India can be taken into account for purposes of being considered whether they are comparable units. Of course, the test laid down by this Court for treating one unit as a comparable one, will have to be satisfied, and once that test is fulfilled, there can be no distinction made between such units and purely local units. Therefore, in our view, the Tribunal, in the case before us, was perfectly justified in taking into account for purposes of comparison units having collaboration with foreign concerns and foreign units doing business in India in the same region and being in the same industry. It follows, therefore, that the principles laid down to the contrary in the awards relied on by Mr. Tarkunde, are erroneous.

Coming to the units relied on by the parties as comparable units, as mentioned earlier, the Unions relied on as many as 21 concerns as comparable with the appellant. No doubt some of the units relied on by them were units having collaboration with foreign concerns. The appellant also in turn filed statement Ex. C-26, referring to six companies which could be treated as comparable concerns.

A The Tribunal rejected most of the units relied on by the Unions on the ground that the information furnished regarding such units were not adequate and complete regarding various factors necessary to constitute a comparable unit. We have also gone through the statements filed by the Unions. In Ex. DU-2, one of the Unions furnished information regarding the business performance of about B nine concerns till the year 1964-65. Similarly, in Ex. DU-3, another Union had given the average performance of nearly ten units for the years 1962-63 to 1964-65. As it would be more desirable to consider the financial capacity of the appellant in the light of the trading results disclosed in the balance sheets and profit and loss accounts from the years 1965-66 to 1969-70, it must be C considered that the information furnished in Exs. DU-2 and DU-3 cannot be considered to be upto date and helpful. The Unions also did not make any further attempt to supplement the information contained in these two exhibits by furnishing information regarding the years subsequent to 1964-65. No doubt, the Unions have furnished particulars regarding one unit, Burroughs Wellcome D (India) Private Ltd., which will be dealt with later. Therefore, the rejection by the Tribunal of most of the units relied on by the Unions was justified.

The appellant Company relied on six units mentioned in Ex. C-26. Those units are Cipla, Chemo-Phama, Zandu, Opil, Sigma and Bengal Chemicals. But the Company did not furnish informa- E tion regarding the business performance of these concerns for a period of years in the immediate past. But it will be noted that the four units referred to in Ex. C-26, namely, Zandu, Cipla, Opil and Sigma, had been considered by the Industrial Tribunal in its previous award Reference (IT) No. 402 of 1963, when the scale of dearness allowance obtaining in the appellant Company was F revised. On that occasion the Tribunal had held that it was only Cipla which came nearest to the appellant Company and even there the dearness allowance obtaining in Cipla cannot be taken for comparison. That means that these four units were left out of account and were not treated as units comparable with the appellant. No fresh materials were placed by the appellant regarding G these four units after the decision of the Tribunal in Reference (IT) No. 402 of 1963. Therefore, the Tribunal in the present case, was justified in rejecting the claim of the appellant that those four units are comparable concerns. The elimination of the four units, thus left for consideration only two concerns, namely, Chemo-Phama and Bengal Chemicals. Even here the Unions had H furnished statements Exs. DU-8 and DU-9, regarding these two units. In Ex. DU-8, the business performance of Chemo-Phama from 1965 to 1969 was given and in Ex. DU-9, the business performance of Bengal Chemicals from 1965 to 1970 was given. The

Unions had also furnished Ex. DU-44 regarding the business performance of the appellant. A comparison of the statements contained in Exs. DU-8 and DU-9 with the material relating to the appellant in Ex. DU-44, regarding the paid up capital, reserves and surplus sales, net block, net profits and gross-profits, it is quite clear that the business performance of Chemo-Phama and Bengal Chemicals do not come anywhere nor that of the appellant. The appellant in all respects stands on a much higher footing. The average gross-profits of the appellant work out to Rs. 40,11,176, while the average gross-profits of Chemo-Phama works out to Rs. 5,31,511 and that of the Bengal Chemicals to Rs. 11,39,553. Therefore, it is clear that these two units also cannot be treated as concerns comparable with the appellant and hence the wage structure prevailing in those concerns cannot provide any useful guidance.

We have already mentioned that the Tribunal has ultimately held that M/s Burroughs Wellcome (India) Private Limited is a concern comparable with that of the appellant. It is no doubt a foreign company in the sense that its entire capital is held by foreign company as shown in the statement Ex. C-11, filed by the appellant. But we have already rejected the contention that such a concern cannot be ruled out of consideration for purpose of comparability.

A very severe attack has been levelled by Mr. Tarkunde in the Tribunal's treating M/s Burroughs Wellcome Company as a comparable unit. According to the learned counsel if the various factors relevant for the purpose of comparison are considered, it will be clear that the appellant cannot stand any comparison with this unit. Mr. Tarkunde further pointed out that instead of taking only one unit for purposes of comparison, the Tribunal should have taken fair cross-section of the industry in order to find out where exactly the appellant can be fitted in. It is no doubt true that a fair cross-section of the industry should be taken into account. But in this case when all the other units have been held to be not comparable with the appellant, this criticism levelled against the approach made by the Tribunal cannot be accepted.

Regarding Burroughs Wellcome Company, the Unions had submitted a statement Ex. DU-2A under a seal of confidential as it was a private limited company. A comparison of the information contained in the said statement Ex. DU-2A regarding the paid up capital, reserves and surplus sales, depreciation, development rebate, provision for taxation, net-profits, gross-profits, net block and dividend declared for the years 1967 to 1970 with the corresponding items in Ex. DU-4A with respect to the appellant shows that both the units are substantially on a par. Normally, the

A statements in Ex. DU-2A could have been extracted in this judgment but for the fact that Burroughs Wellcome Company being a private limited company and the statements having been furnished in a sealed cover, they could not be made public. The paid up capital is identical in both the concerns. The average sales of Burroughs Wellcome Company and those of the appellant are B substantially the same. The difference between the net-profits of the two is significantly small. The gross-profits of the two units are also close to each other. No doubt there are some small differences between the two in these items, but they are of no significance. The various factors which have to be taken into account for he purpose of a unit being treated as a comparable one as laid C down by this Court have already been referred to. If so, all those factors taken into account clearly show that Burroughs Wellcome Company is a unit comparable with the appellant.

No doubt the appellant has relied on the ratio of employees to sales, as well as to debt equity ration and the percentage of profit to sales in respect of the appellant and the Burroughs Wellcome D Company. Ex. C-22 contains the ratio of employees to sales in 1968-69. Though there are certain other units referred to therein, we will only advert to the particulars regarding the appellant and the Burroughs Wellcome Company, which are as follows :

Ration of Employee to Sales

E

Name of the Company	Year	Sales	No. of Employees	Per employee sale
		Rs.		Rs.
Unichem	68-69	32994456	752	43875
Burroughs	69	25000000	425	58823

F A reference to Ex. C-22 will show that the sales of the appellant is higher than that of Burroughs Wellcome Co. No doubt the ratio per employee is slightly less in the case of the appellant. It is also seen that the appellant employs nearly 752 workmen whereas Burroughs Wellcome Co. employs only 425 workmen.

In Ex. C-18, particulars regarding Debt Equity Ratio have G been given. That statement contains particulars regarding the various firms including the appellant. In 1969 the capital of the appellant was Rs. 101.86 lakhs. It had borrowed Rs. 95.89 lakhs and the percentage on borrowed funds to capital works out to 94.1%. It is no doubt true that there is no borrowed capital in Burroughs Wellcome Co. In Ex. C-18 particulars regarding nine H units have been given and it is seen that except two units, all the other seven units, including the appellant, have borrowed. In fact it is interesting to note that Glaxo, which has a capital of Rs. 1196.81 lakhs had also borrowed Rs. 26.80 lakhs. Similarly,

Chemo-Phama which had a capital of only Rs. 32.05 lakhs had borrowed Rs. 37.08 lakhs and the percentage works out to Rs. 115.7%. We are referring to these aspects because it was stressed by Mr. Tarkunde that the Debt Equity Ratio in the appellant is very high and that it has to pay a large amount by way of interest on borrowed funds which is not the case with Burroughs Wellcome Company. But the statements contained in Ex. C-18 themselves clearly show that borrowing for the purpose of business seems to be a usual pattern followed by the companies in the region.

Ex. C-15 is a statement relating to percentage of profit to sales for the years 1965-66 to 1969-70. No doubt the figures given therein show that the percentage of profits has been fluctuating: but, in our opinion, the particulars contained in the above exhibits, relied on by the appellant, do not affect the findings of the Tribunal that Burroughs Wellcome Company is a unit comparable with the appellant.

Another criticism that has been levelled by Mr. Tarkunde is that the Tribunal has not taken into account the prospects of the future business of the appellant. In this connection the appellant relied on the coming into force with effect from January 1, 1971 of the Drugs (Price Control) Order, 1970. According to Mr. Tarkunde whatever may have been the financial position of the appellant in the past, its future business is bound to suffer in view of this price control order. He referred us to the decision in *Williamsons (India) Private, Ltd.* v. *Its Workmen*(1) of this Court wherein it has been held, amongst the various factors which have to be taken into account for the purpose of fixation of wage scales and dearness allowance, the prospect of future business is a very relevant circumstance. This factor, according to the appellant, has not been taken into account by the Tribunal.

We have earlier referred to the decisions of this Court regarding the principles governing the fixation of wages and dearness allowance. It is no doubt a long range plan and the prospects of future business amongst other factors have also to be taken into account. The case of the appellant is that in 1963, there has been a price freeze and that has affected its business and therefore the Drugs (Price Control) Order, 1970 will affect its future business. We have already extracted in the earlier part of the judgment the trading results of the appellant from 1965-66 to 1969-70. If the price freeze which came into force in 1963 had any affect, then it must have been reflected in the trading results of the appellant. The

(1) [1962] 1 L.L.J. 302.

A trading results of the appellant during the years 1962-63 to 1964-65 are as follows :

Particulars	1962-63	1963-64	1964-65
Paid-up capital	4491000	4499250	4499500
Reserves and Surplus	476569	1010753	1505353
B Sales	10241405	15665883	17388705
Net Block	3907400	4371113	4345467
Provision for Taxation	934000	1065000	1515000
Depreciation	297243	379256	390878
Development rebate	33686	100617	22329
Net Profits	442881	703567	877271

C A glance of the above statement clearly shows that though the paid-up capital remains the same, there has been a steady rise in the reserve and surplus sales and net profits. Similarly, the net block has also an increase. There has been no set back in the sales. On the other hand there has been a steady rise in the sales. No doubt for the year 1969-70 the profits did go down; but the D drop is comparably small and the appellant has not been able to satisfy us that it is due to the price freeze.

Then the question is regarding the impact of the Drugs (Price Control) Order, 1970, which has come into effect from January 1, 1971. In this connection it is necessary to refer to the speech E made by the Chairman of the Board of Directors of the appellant Company at the Annual General Meeting held on January 9, 1971. At this stage it may be mentioned that the Accounting year of the appellant Company is from October 1, to September 30, of the succeeding year. On January 9, 1971, the Chairman was giving a review of the working of the Company for the year ending September 30, 1970. He had clearly stated that the impact of the F Drugs (Price Control) Order, 1970, which had come into force only recently will be felt by the Company only after the year 1970-71. The appeal was heard by us from January 3, 1972 and concluded only on January 10, 1972. As the Company, in the previous years had been having its Annual General Meetings in early January, of each year, we suggested to the counsel for the G appellant that as the approximate trading results for the year commencing from October 1, 1970 to September 30, 1971 would have been available by then, they may be furnished so that it may be possible to find out the impact of the Drugs (Price Control) Order on the trading results of the appellant. But it was represented that the figures are not available. It is not necessary for us to com- H ment except to state that going by the fact that on former occasions the figure had been ready by the first week of January to enable the Annual General Meeting of the Company to be held, it would not have been difficult for the appellant to have furnished at least

the approximate figures, if really the trading results had shown a decline. The appellant has missed an opportunity that was provided to it to establish that the Drugs (Price Control) Order has adversely affected its business. Under those circumstances, it is not possible for us to disagree with the view of the Tribunal that the impact of the Drugs (Price Control) Order will not be such as to affect materially the business prospects of the appellant Company.

We may state that if the Drugs (Price Control) Order, materially affects the prosperity of the appellant's trade, it would be open to it to raise a dispute for the reduction in the wage structure and in case they are able to show that in view of the Drugs (Price Control) Order, their financial position has been weakened to such an extent that they cannot bear the burden of wage structure fixed by the present award, the matter may have to be examined on its merits.

The question of fixation of wage scales need not detain us very long. We have already extracted the wage scales prevailing in the appellant company as well as the categories of workmen when the reference was made. We have also referred to the fixation of wage scales by the Tribunal on a comparison with the wage scale obtaining in Burroughs Wellcome Company. The wage structure as well as the grades that were prevalent in Burroughs Wellcome Co. in pursuance of the settlement dated June 13, 1966 regarding the operatives and clerical and subordinate staff have been incorporated by the Tribunal in its Award. We do not think it necessary to reproduce the same. A comparison of the wage scales in Burrough Wellcome Company and the wage scales fixed by the Tribunal in the Award for the Company will show that the Tribunal has only made some slight variation in view of the fact that it accepted the report of the assessor for the continuance of the existing grades in the Company. As some of those grades were not existing in Burroughs Wellcome Company, the Tribunal had to make some slight changes. Wherever it was possible the wage structure in Burroughs Wellcome Co. has been retained but the maximum has been raised a little and some slight changes have also been made in the incremental stage.

Once Burrough Wellcome Company is treated as a comparable unit, we are satisfied that the wage scales awarded by the Tribunal cannot be considered to be unjustified. The Tribunal's finding regarding the financial capacity of the appellant has already been referred to and we accept the same.

It was, however, pointed out by Mr. Tarkunde that in considering the comparability of a unit; strength of the labour force has also to be given due importance. Mr. Tarkunde pointed out that

A while the appellant employs 752 workmen, there are only 436 in Burroughs Wellcome Co. as is seen from the Statement Ex. C-22. No doubt to this extent, the two units differ, but when one bears in mind the business performance of both the units, there is not much of a substantial difference. It may be that because of the fact that Burroughs Wellcome Co. adopts more modern methods B of production, it was employing a smaller complement of workers. Having due regard to all the other tests that have been satisfied, this difference in the strength of labour force alone, in our opinion, cannot be given undue importance. It is pertinent to note that this Court in *Workmen of New Egerton Woollen Mills* v. *New Egerton Woollen Mills and others*(1) did not disagree with the view C of the Industrial Tribunal which had treated the respondent therein and another unit as a comparable unit, notwithstanding the fact that the respondent was employing at the material time about 3000 workmen whereas the unit which was treated as a comparable unit was having the labour force of only about 1000 men, in view of the fact that all other requirements for comparability were satisfied. In fact, in the case before us, the Tribunal has adverted to this D difference of labour force of the appellant and Burroughs Wellcome Company, but nevertheless it held that, that by itself is not sufficient to eliminate Burroughs Wellcome Company as a comparable unit. We agree with this approach made by the Tribunal.

An objection was taken on the basis of s. 10(4) of the Indus- E trial Disputes Act, 1947 that the Tribunal has permitted the Unions to revise their demand regarding classification and grades of workmen and that the Tribunal has further committed an error in upholding the grades of Stenographers, Assistants and Store-keepers and merging them with that of the Senior Clerks. We are not inclined to accept this contention advanced on behalf of the appel- F lant. We have already referred to the fact that as the question of classification and fixing grades were matters of a technical nature, at the joint request of both the parties, the Tribunal appointed Sri Gadkari, as an assessor. It was really in view of the stand taken by both the parties before the assessor and the Tribunal, after the report was submitted by the assessor that the Tribunal has G accepted the report that the existing grades should continue. But as the workmen had to be fitted in the appropriate grades, the Tribunal was justified in fitting in the categories the workmen and their grades as well as their scales of wages. The above contention based upon s. 10(4) of the Industrial Disputes Act, at the most can relate, if at all, only to the operatives. The report of H Sri Gadkari has already been referred to. He had suggested the retention of the existing categories. The workmen have necessarily to be classified for the purpose of being put in particular categories

(1) [1969] 2 L.L.J. 782.

and the wages also have to be suitably fixed depending upon the category in which they are so fitted. Having due regard to the nature of the reference, classification though jobwise and the fixing of wages of pay and fitting the workmen in suitable categories were all matters incidental and as such the Tribunal has acted within its jurisdiction in classifying the workmen and fixing the scales of pay after fitting them in particular categories. In the view above expressed, we do not think it necessary to refer to the decisions referred either by Mr. Tarkunde, learned counsel for the appellant or by Mrs. Urmila Kapoor, on behalf of the respondent No. 2 as to when exactly the matter can be considered to be incidental to the question referred for adjudication.

Before we take up the question of dearness allowance, one other point that requires to be adverted to is the objection taken on behalf of the appellant regarding the raising in the gratuity scheme the ceiling limit from 15 months to 17½ months' basic wages. The Tribunal has adopted the pattern obtaining in Burroughs Wellcome Company. We do not see any question of principle involved in this matter and therefore we find no merit in the objection raised by the Company.

The pattern of dearness allowance that was in force in the appellant Company at the time of the reference has been indicated already. We have also referred to the scale of dearness allowance fixed by the Tribunal. There were different systems of dearness allowance for the operatives and the clerical and subordinate staff. That such a different system of dearness allowance for the employees working under the same employer is not warranted, is clear from the decisions of this Court in *Greaves Cotton & Co. and others* v. *Their Workmen*(1) and *Bengal Chemical & Pharmaceutical Works Ltd.* v. *Its Workmen*(2). Therefore, the Tribunal was justified in devising a uniform scale of dearness allowance applicable to all the employees of the appellant. The Unions required a common scheme of dearness allowance of slab system to be introduced for all employees. The appellant resisted the claim on the ground that there was already a scheme of dearness allowance existing in the Company and that there is no justification for revising the same. But, nevertheless, the Tribunal has adopted, by and large, the scheme of dearness allowance which was in vogue in Burroughs Wellcome Co. Normally, once Burroughs Wellcome Co. is treated as a unit comparable with the appellant, the Tribunal must be considered *prima facie* to be justified in introducing the pattern obtaining in that unit. However, it is pointed out on behalf of the appellant that the slab system of dearness allowance does not obtain in any of the pharmaceutical industries in the region.

(1) [1964] 5 S.C.R. 362. (2) [1969] 2 S.C.R. 113.

A The contention that because there was a system of dearness allowance in existence in the Company and therefore there was no justification for revising the same, cannot be accepted. A similar contention raised in *Remington Rand of India* v. *Its Workmen*(1) was rejected by this Court. In that case there was a system of dearness allowance providing for payment of not only a rate of B percentage on the basic salary but also a variation in the percentage on the rise or fall of the cost of living index. The workmen demanded revision of the scale of dearness allowance on the ground that the cost of living index had increased. The claim was resisted by the Company on the ground that the scheme of dearness allowance then existing in the Company itself provided for an increase C in the cost of living index and therefore no revision is required. This contention was not accepted by this Court. It was held that a claim made by the workmen, if otherwise justified, cannot be rejected on the sole ground that a provision is already made in an existing scheme of dearness allowance for adjustment depending upon an increase in the cost of living index. This Court further held that if it is established that the cost of living shows a tendency D to rise very high, the workmen would be entitled to claim and there may be a change in the rate of dearness allowance originally fixed, so as to provide for more neutralisation. It was further held that a claim made by the workmen will have to be properly considered and adjudicated upon by the Tribunal. In fact, in that case, it is seen that there was only a 50 point rise in the cost of living index E and nevertheless the revision of the scale of dearness allowance by the Tribunal was upheld.

We may also refer to the decision of this Court in *Workmen of Balmer Lawrie and Co.* v. *Balmer Lawrie and Co.*(2) wherein it has been held as follows :

F

> "If the paying capacity of the employer increases or the cost of living shows an upward trend, or there are other anomalies, mistakes or errors, in the award fixing wage structure, or there has been a rise in the wage structure in comparable industries in the region, industrial G employees would be justified in making a claim for the re-examination of the wage structure and if such claim is referred for adjudication, the Adjudicator would not normally be justified in rejecting it solely on the ground that enough time has not passed after the making of the award, or that material change in relevant circumstances had not been proved. It is of course, not possible to lay H down any hard and fast rule in the matter. The question as to revision must be examined on the merits in each

(1) [1962] 1 L.L.J, 287. (2) [1964]5 S.C.R. 344,

individual case that is brought before an adjudicator for his adjudication." A

On the date when the settlement was entered into between the appellant and its workmen on April 20, 1966, the cost of living index was 630. From Ex. C-1 it is seen that in August 1969, the cost of living index had gone up to 790 and from Ex. DU-10 dated December 8, 1970, it is seen that when the second settlement was entered into between Burroughs Wellcome Co. and its workmen, the cost of living index had gone upto 800.1. It is also seen that at the time of the Award it had gone up further to about 850 points. Therefore, from the date of the setllement in 1966 the cost of living index had very rapidly gone up by 220 points. At the time when the demand for revision of wage-scales and dearness allowance was made by the Unions and when the reference order was made by the Government, the cost of living index had gone up very high. That clearly shows that the workmen had made out a case for revision of wage-scales and dearness allowance. B C

We have earlier referred to the scheme of dearness allowance fixed by the Tribunal in the Award. The scheme provides for payment of a particular percentage on the basic salary and it also provides for variation on 10 points. But the dearness allowance has been fixed on the Bombay Working Class Cost of Living Index of 521-530. Though more or less the same pattern of dearness allowance was obtaining in Burroughs Wellcome Co., the dearness allowance in the latter was fixed at the Bombay Working Class Cost of Living Index of 491-500. The scale of dearness allowance, as demanded by the Unions, was on the basis of the cost of living index 401-410. It was accepted by the appellant that the scheme obtaining in Burroughs Wellcome Company is more advantageous from the financial point of view than the scheme of dearness allowance demanded by the Unions. In fact, the Tribunal itself has made a further concession in favour of the appellant by adopting the cost of living index of 521-530 instead of 491-500 as was obtaining in Burroughs Wellcome Co. The Tribunal had made this change in the cost of living index in view of the fact that in the appellant Company, there was an Incentive Wages Scheme in and by which operatives were getting on an average about Rs. 28/- per month. Therefore the financial burden cast on the appellant by the dearness allowance scheme fixed by the Tribunal is such that the appellant can bear the burden. D E F G

In order to show that in the Bombay region the pharmaceutical units were adopting the slab system of dearness allowance, the Unions had filed a chart Ex. DU-1. It is evident from Ex. DU-1, that out of 19 pharmaceutical units, referred to therein, at least 11 of them adopt the slab system of dearness allowance which has been H

A introduced in the case of the appellant in the Award. No doubt, it is pointed out by Mr. Tarkunde that in the statement filed by the appellant, Ex. C-25, it will be seen that none of the Indian owned units have adopted the slab system. But whether those units have adopted or not, we have already indicated, that no distinction can be made between a purely local unit and a foreign unit doing B business in India or an Indian unit doing business in collaboration with foreign concern. When once such units can be taken into account as comparable units, the pattern of dearness allowance obtaining therein can very well be considered to ascertain the system adopted by the industry as that will show the trend in the region. As pointed out above, at least 11 units, referred to in C Ex. DU-1 have adopted the system now introduced in the case of the appellant by the Tribunal. Under those circumstances, when such system is prevailing in the industry in the same region, it cannot be held that the Tribunal has committed any error, in introducing a similar pattern in the case of the appellant. The slab system has been approved by this Court as will be seen by the decisions in *Greaves Cotton and Co. and others* v. *Their Work-* D *men*(1) and *Bengal Chemical and Pharmaceutical Works Ltd.* v. *Its Workmen*(2). Even in Bombay that such a pattern of dearness allowance, as the one introduced in the case of the appellant, is existing is seen by the decisions of this Court in *Greaves Cotton and Co. and others* v. *Their Workmen*(1) and *Kamani Metals & Alloys Ltd.* v. *Their Workmen*(3). No doubt the industries therein E were not pharmaceutical units. But that such a system exists in Bombay region is clear from the above decisions.

Mr. Tarkunde referred us to the Award of the Industrial Tribunal in Reference (IT) No. 411 of 1966 in *Voltas Limited, Bombay* v. *The Workmen Employed* under them dated September F 30, 1969 wherein the adoption of slab system has not been approved. On the other hand, Mrs. Urmila Kapoor, learned counsel for respondent No. 2 has drawn our attention to a number of awards of the Industrial Tribunal rendered during the years 1965 to 1968 wherein the slab system of dearness allowance has been adopted in Bombay region. It is only necessary to refer to the award in the case of *May and Baker Limited, Bombay* v. *Its Work-* G *men*, because that is a pharmaceutical unit. The award was given in or about June 1967 and it is seen that the dearness allowance on the pattern now given by the Tribunal in respect of the appellant has been adopted.

We have already referred to the fact that in Ex. DU-1, it is seen H that as many as 11 pharmaceutical units in Bombay region have adopted the pattern of granting dearness allowance on the slab

(1) [1964] 5 S.C.R. 362. (2) [1969] 2 S.C.R. 113.
(3) [1967] 2 S.C.R. 463.

system now incorporated in the present award. Though most of the units referred to therein could not be treated as units comparable with the appellant because of lack of full information regarding material factors, yet those concerns can be taken into account inasmuch as the system obtaining in those concerns will show that the slab system is not something new to the pharmaceutical units. We have already referred to the award in *May and Baker Limited, Bombay* v. *Its Workmen*. These facts clearly show that the scheme of dearness allowance provided in the award before us in respect of the appellant is not anything new. On the other hand, the Tribunal has only adopted the system prevailing in the region in respect of pharmaceutical units.

So far as the financial burden is concerned, we have already referred to the findings recorded by the Tribunal. Even on the basis that the Tribunal was not justified in proceeding on the assumption that 52 chemists are not covered by the reference, in our opinion, the additional burden that will be cast on the appellant can be easily borne by it. Therefore, we see no error in the scheme of dearness allowance introduced, in the case of the appellant, by the Tribunal.

The only other point that requires to be considered is in respect of the direction given by the Tribunal regarding the Incentive Bonus Scheme in respect of which the appellant had given notice of change under s. 9A of the Industrial Disputes Act, 1947. We have already referred to the nature of the scheme that originally existed and the modification sought to be made by the appellant. We have also pointed out that the Tribunal has not accepted most of the recommendations made by Sri Tulpule, who was appointed as an assessor on the joint application of both the parties. The Tribunal has stated that it is desirable that a scheme is worked out, if possible, by consent of parties for the purpose of protecting the interest of the workmen at the increased base performance index.

According to Mr. Tarkunde the Tribunal itself should have gone into the matter and evolved a scheme. No doubt, it would have been desirable if the Tribunal had actually evolved a scheme. But the Tribunal has stated that the necessary material for that purpose has not been made available and as such it has not been possible to devise a scheme calculated to afford protection to the incentive earning of a workman at the raised base performance index. In fact, we also suggested to the counsel that the parties may consider the matter and submit a scheme for that purpose. But it was represented to us on February 9, 1972 by Mrs. Umila Kapoor, learned counsel for respondent No. 2, that it has not been possible for the parties to arrive at an agreement in respect of that matter, at present. Therefore, there is nothing further that could

A be done by this Court in this regard; and the result is that the observations made by the Tribunal in this regard will have full effect.

In the result, all the contentions of the appellant are rejected and the Award of the Industrial Tribunal in respect of the matters in controversy in the appeals are confirmed. All the appeals are B dismissed. In Civil Appeal No. 1091 of 1971, the appellant will pay the costs of respondents Nos. 1 and 2. In the other appeals, parties will bear their own costs.

The appellant will have three months' time from today for payment of the amounts due under the award.

C

G.C.