

**(2019) 05 SHI CK 0060**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 181 Of 2019**

Bovel Lal

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

**Date of Decision :** 04-05-2019

**Acts Referred:**

Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 22, 22A  
Constitution Of India, 1950 — Article 21

**Citation :** (2019) 05 SHI CK 0060

**Hon'ble Judges :** Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

**Bench :** Division Bench

**Advocate :** Kush Sharma, Ashok Sharma, Ajay Vaidya, J.K. Verma, Adarsh Sharma, Nand Lal Thakur, Divya Sood

**Final Decision :** Dismissed

## Judgement

Tarlok Singh Chauhan, J

1. The petitioner is a representative of the Himachal Pradesh Parent Teachers Associations and aggrieved by the notification dated 14.01.2019 issued by the District Magistrate, Shimla, whereby the venue at Chhota Shimla near Police Station 1Whether the reporters of the local papers may be allowed to see the Judgment?Yes has been denotified for holding demonstration, rallies etc. has filed the instant writ petition for grant of the following reliefs:-

"i) Issue a writ of certiorari to quash impugned order dated 14-01-2019 i.e. Annexure P-3.

ii) Issue a writ of mandamus directing the Respondent authorities not to implement the impugned order dated 14-01-2019 i.e. Annexure P-3 in the case where already permission has been accorded.

Iii) That the Respondent may further be directed to declare proper place as suitable venue for holding demonstrations, rallies etc. which does not obstruct traffic and inconvenience to the general public."

2. We really wonder how the instant writ petition is maintainable. The petitioner is admittedly working as Contract Teacher with the Education Department of the State of Himachal Pradesh and, therefore, is not an industrial worker covered by the provisions of the Industrial Disputes Act, 1947, Industrial Employees Standing Orders, 1946, Trade Unions Act, 1926 and hosts of other legislation and, as such, has neither any fundamental nor statutory or a moral right to go on strike. The law on this subject is well settled and reference in this regard can conveniently be made to the judgment of the Hon'ble Supreme Court in T.K. Rangarajan versus Government of T.N. and others, (2003) 6 SCC 581 wherein in paragraphs 12, 17 to 19, it was held as under:-

"(A) There is no fundamental right to go on strike:-

12. Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike. In Kameshwar Prasad and others v. State of Bihar and another [(1962) Suppl. 3 SCR 369] this Court (C.B.) held that the rule in so far as it prohibited strikes was valid since there is no fundamental right to resort to strike.

(B) There is no legal/statutory right to go on strike. 17. There is no statutory provision empowering the employees to go on strike.

18. Further, there is prohibition to go on strike under the Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as "the Conduct Rules"). Rule 22 provides that "no Government servant shall engage himself in strike or in incitements thereto or in similar activities." Explanation to the said provision explains the term 'similar activities'. It states that "for the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes. Rule 22-A provides that

"no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises -

(a) during office hours on any working day; and (b) outside office hours or on holidays, save with the prior permission of the head of the Department or head of office, as the case may be."

(C) There is no moral or equitable justification to go on strike.

19. Apart from statutory rights, Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a

whole and particularly when two lakh employees go on strike enmasse, the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a stand still; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike."

3. Similar, issue came up before the learned Division Bench of this Court in CWP No.404/2007, titled Devinder Negi versus State of H.P. and others, decided on 15.10.2009. wherein while dealing with a question as to whether members of the Resident Doctors Association (RDA) working in the Indira Gandhi Medical College (IGMC) had a right to go on strike when their services were in dire need to the patients, the learned Division Bench of this Court held as under:-

"12. The law on this subject is very well settled and it has been repeatedly held by the Apex court that the government employees have neither fundamental nor statutory or moral right to resort to strike. The impact of such strikes by the students and medical community who are directly connected with the hospitals is totally different from the strike in a factory or trading establishment, as ailing patients cannot be left waiting or unattended. Hospital activity is not the same as the lifeless functioning of machines in a factory or movement of trading material or other forms of commerce. Almost all the activities in relation to hospital are such as require constant and incessant attending and care, unlike financial losses; the loss of life or limb cannot be recouped. The Junior Doctors and student community undergoing medical courses are to realize and understand the realities and their duties towards the ailing patients in particular and the society at large before resorting to any such activity. In Pt. Parmanand Katara v. Union of India: AIR 1989 SC 2039 the Apex court observed:

"Every doctor whether a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in status or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. Every doctor should be reminded of his total obligation and be assured of the position that he does not contravene the law of the land by proceeding to treat the injured victim on his appearance before him either by himself or being carried by others."

13. Thus for all above reasons, we are constrained to hold that the strike by the Doctors is illegal and unethical as it infringes the fundamental right of the patients enshrined in Article 21 of the Constitution of India. The patients have

also a fundamental 'Right to Life' and therefore, at the same time the medical treatment, which is an integral and essential part of the fundamental right, cannot be ignored.

14. Even in a case of strike by lawyers, in *Ex-Capt. Harish Uppal v. Union of India*(2003) 2 SCC 45, the Constitution Bench of the Supreme Court observed that the Lawyers have no right to go on strike or give a call for boycott and even they cannot go on token strike. The court specifically observed that for just or unjust cause, strike cannot be justified in the present day situation. Take strike in any field, it can be easily realized that the weapon does more harm than good. The sufferer is the society ---public at Large.

15. Thus there is neither any legal or statutory right of the employee to go on strike nor moral or equitable justification of the RDA to resort to strike in any manner. The public cannot be held at ransom by resorting to strike, even if there is injustice to some extent, as presumed by such employees, in a democratic welfare state.

16. In *T.K Ranga Rajan v. Govt. of Tamil Nadu*, AIR 2003 SC 3032, the Supreme Court also observed that Strike is a weapon mostly misused which results in chaos and total maladministration. En masse Strike affects the society as a whole; the entire administration comes to a grinding halt. In case of strike by the teachers the entire education system suffers. Many students are prevented from appearing in their exams which ultimately affects their whole career. In case of strike by doctors, innocent patients suffer. On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who go on strike. In a society where there is a large scale unemployment and number of qualified persons are eagerly waiting for employment in Government Departments or in public sector undertakings strikes cannot be justified on any equitable ground. The misconduct of the employees, by the government is required to be dealt with in accordance with law. However, considering the gravity of the situation and the fact on occasion, even if the employees are not prepared to agree with what is contended by some leaders who encourage the strike, they are forced to go on strikes for the reason beyond their control. Therefore, even if the provisions of the act and the rules are not enforced, they are to be enforced after taking into consideration the situation and the capacity of the employees to resist. On occasion there is tendency or compulsion to blindly follow the others. The Apex court in the above case further observed that, whatever the reasons may be, it will not be proper for the government servants to resort to strike, even though they have a genuine and bonafide grievance. That has to be redressed only by resorting to the machinery provided under the statutory powers governing the Government servants, but not resorting to strike."

4. Apart from above, it would be noticed that the reasons given for denotifying the venue at Chhota Shimla near Police Station for holding demonstration, rallies etc. are that it obstructs the traffic and causes inconvenience to the general

public.

5. The right to carry out demonstration/dharna is otherwise subject to reasonable restrictions and can only be carried out so as to ensure that minimum inconvenience is caused to the public at large. The employees going on 'dharnas' or protests etc. cannot obstruct the free flow of traffic or cause inconvenience to the general public merely because the protesters have been able to muster-up a sizeable number will not give them the right to hold the general public to ransom, bringing the entire administration to a grinding halt and because of strike by teachers, as observed in T.K. Rangarajan's case (supra), the entire education system suffers.

6. Even the learned counsel for the petitioner was not in a position to controvert the correctness of the reasons given for denotifying the venue at Chhota Shimla near Police Station, but would contend that there is no alternate site notified by the Government for holding such kind of demonstration rallies etc.

7. However, we find that even this submission is without any merit as the respondents have annexed with their reply notification dated 21.02.2015 (Annexure R-1) wherein following venues have been notified for holding demonstration, rallies etc. with prior permission of the competent authority i.e. Sub Divisional Magistrate/ Additional District Magistrate/ District Magistrate:-

1. CTO Chowk for 200 persons.
2. Starting of Lower Bazar below Rani Janshi Park for 50 persons.
3. Chhota Shimla near police station for 25-50 persons.
4. Subzi Mandi Ground for 1000 persons.
5. Ambedkar Chowk for 500 persons.
6. Summer Hill Chowk for 250 persons.

8. In view of the aforesaid discussion, we find no merit in this writ petition and the same is accordingly dismissed. Pending application, if any, also stands disposed of.

9. Now that the respondents have themselves acknowledged the fact that the demonstrations/rallies held near Police Station, Chhota Shimla, obstruct the traffic and cause inconvenience to the general public by issuing notification dated 14.01.2019, we therefore direct that henceforth no person(s), association, society, authority etc. shall carry out demonstrations/rallies etc. near Police Station, Chhota Shimla.