

(1988) 11 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1619/85 etc.

G.Y.N. Chainulu and Others

APPELLANT

Vs

The Depot Manager, A.P.S.R.T.C., Amalapuram and Another

RESPONDENT

Date of Decision : 08-11-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 12, 12(3), 22, 26, 3

Citation : (1989) 2 LLJ 81

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Judgement

1. The three writ petitions raise common questions of law and fact, therefore, they are disposed of by a common judgment. Admittedly, the respondent-Management introduced new night shift hours. The Union espoused the cause and initiated conciliation proceedings u/s 12 of the Industrial Disputes Act (14 of 1947) for short, "the Act". A report of failure u/s 12(3) of the Act was submitted by the Labour Officer. Thereafter, the Union has issued notice on December 24, 1984, u/s 22, giving 14 days' time for settlement for reviewing the new timings or to amend it suitably or not to give effect to the new right shift hours which would affect their health. It was received on the same day by the Management. Fourteen days' time expired on January 7, 1985. The workmen went on strike for a day on January 10, 1985. But the Management has relied upon the notification issued by the Government in G.O.Ms. No. 375 dated December 27, 1984 declaring the strike of the workmen as illegal under sub-section (1) and (3) of Section 3 of Andhra Pradesh Essential Services Maintenance Act, 1971 (Act 20 of 1971). Then notice dated February 5, 1985 under proviso to sub-section (2) of Section 9 of the Payment of Wages Act, 1936 (for short, "the Wages Act") was issued to show cause why eight days salary should not be cut. The notice was served. The Union submitted its explanation and it was rejected by the Management on February 21, 1985 directing to deduct to three days' wages. Assailing the legality thereof, the writ petitions have been filed.

2. The contention of the petitioners and argued by Sri Prabhakar Rao, their learned Counsel, is that proviso the sub-section (2) of Section 9 of the Wages Act cannot be put in the teeth of Section 26 of the Act and Section 4 of the Essential Services Maintenance Act. It is further contended that in view of Section 8 of the Essential Services Maintenance Act, the recourse to Section 9(2) proviso of the Act is excluded. In either way, the action taken by the respondents is illegal. Sarvasri Reddappa Reddy and Harinath, learned standing counsel for the respondent-Corporation, have resisted the contentions. Sri Redappa Reddy further contends that once the State Government has taken decision in exercise of power u/s 3 of the Essential Services Maintenance Act that the services under the Corporation are public utility services prohibiting strikes, then the absence from duty by the workmen is illegal and without due notice as required under the proviso to sub-section (2) of Section 9 of the Wages Act. Therefore, the management has power to deduct the wages. It is also further contended that there is no inconsistency in the proviso to Section 9(2) of the Wages Act with Section 4 of the Essential Services Maintenance Act. The management has got right to deduct wages of the employees under proviso to Rule 9(2) for their absence from duty and for the misconduct, disciplinary action could also be taken under the Andhra Pradesh State Road Transport Corporation (CC & A) Regulations. They can also take penal action for illegal strike u/s 4 of the Essential Services Maintenance Act. Further they have also got power to take action under proviso to Section 9(2) of the Wages Act. Sri Harinath further contends that Section 4 of the Essential Services Maintenance Act is analogous to Section 26 of the Act whereas Section 9(2) of the Wages Act gives power to the authorities to deduct wages. Thereby, there is no inconsistency and accordingly the proviso to Section 9(2) applies to the facts of the case and the action taken cannot be said to be illegal or without jurisdiction.

3. In view of the respective contentions, the first question that arises for consideration is whether the strike is an illegal strike. Admittedly, after submission of the failure report u/s 12(3) of Act, notice of token strike was given on December 24, 1984. Section 22 contemplates prohibition on strikes and postulates that (1) no person employed in a public utility service shall go on strike in breach of contract - (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or-(b) within fourteen days of giving such notice; - (c)..... (The other clauses and sub-sections are not relevant. Hence omitted). A reading thereof clearly shows that it prohibits an employee in a public utility service to go on strike unless he shall give in writing a notice of strike within six weeks before organising the strike or within fourteen days of giving such notice. Therefore, it is mandatory that an employee shall give notice within six weeks before striking or within fourteen days of giving such notice, whichever is clear. In this case, admittedly such a notice was given by the Union and it was received by the Management and the time expired on January 7, 1985. Strike was organised by the workmen numbering more than ten on January 10, 1985. But the State Government, in exercise of the power u/s 3 of

the Essential Services Maintenance Act, issued G.O.Ms. No. 375 dated December 27, 1984 declaring the strike by the workmen in the respondent-organisation which is admittedly a utility service, as illegal, Thereby, their strike becomes illegal. Sec 4 of Essential Services Maintenance Act provides penalty for illegal strikes and it reads thus : "Any person who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in, any such strike shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees or with both." Section 5 and 6 thereof also provide penalties the details of which are not necessary. Section 7 gives power to arrest without warrant. Section 8 gives over-riding effect and it postulates that the provisions of this Act and of any notification and order issued thereunder shall have effect notwithstanding anything inconsistent therewith in the Industrial Disputes Act, 1947, or in any other law for the time being in force.

4. Therefore, if any action taken is consistent with the provisions of the Act or any notification issued thereunder shall have effect notwithstanding anything inconsistent therewith in the Industrial Disputes Act or in any other law for the time being in force, then the Act prevails over the other laws. Then the question is whether the proviso the sub-section (2) of Section 9 of the Wages Act is consistent with Section 4 of the Essential Services Maintenance Act ? Section 9 of the Wages Act gives power to the Management to deduct wages for absence from duty. Sub-section (2) thereof provides that the amount of such deduction shall in no case bear to the wages payable to the employed person in respect of the wage-period of which the deduction is made a larger proportion than the period for which he was absent bears to the total period, within such wage-period, during which by the terms of his employment, he was required to work; Provided that, subject to any rules made in this behalf by the State Government, if ten or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight day as may by any such terms be due to the employer in lieu of due notice. (Explanation is not necessary. Hence omitted). A reading of Section 9(2) would give us an indication that the Management is entitled to deduct wages of the employee for his absence from duty in respect of the wage period for which the deduction is made a larger proportion than the period for which he was absent bears to the total period within such wage period which he was required to work; and the proviso gives power to deduct a sum not exceeding his wages for eight days, provided that workmen are ten or more and in concert absented themselves (1) without due notice; and (2) without reasonable cause for such absence. Thereby it is mandatory that in a case where ten or more employed persons acted in concert in absenting from duty it is their duty to give due notice and also shall give reasonable cause for such absence from from duty. If both the limbs are not satisfied then the Management has power to deduct wages not

exceeding eight days from the employed workmen. The question, therefore, is whether the notice issued u/s 22 can be construed to be without due notice by operation of the notification issued u/s 3 of the Essential Services Maintenance Act. In similar circumstances, in *Management of Jawahar Mills Ltd., Salem Vs. Industrial Tribunal, Madras and Others*, the question was whether the notice for absence from duty when strike was prohibited under the Industrial Undertaking Act will be without due notice and without reasonable cause. While considering that question, it was held by Veeraswami, J. (as he then was) that once strike is declared to be illegal under the Industrial Undertakings Act it is no due notice within the meaning of proviso to Section 9(2) of the Wages Act. I respectfully agree. The object is that due notice contemplates notice in accordance with law. Once law declares such a strike is illegal then it cannot be constructed to be due notice. Therefore once a strike was declared to be illegal by operation of notification issued u/s 3 of the Essential Services Maintenance Act, then it is not a due notice, thereby the first limb of proviso to subsection (2) of Section 9 is not satisfied. Then the question is whether the management entitled to deduct three days wages, as ordered in this case. In this case, the right to deduct wages is only a right the employer has against the employees for their absence from duty without due notice and without reasonable cause. But such absence from duty was declared to be an offence or penal, by operation of Section 4 of the aforesaid Act. Section 4 provides penalty for such absence from duty with imprisonment or with penalty or with both. Therefore, it creates penal consequences. The right to deduct wages for the same offence is created under the proviso of Section 9(2) of the Act. Thereby, since the right given u/s 9(2) is inconsistent with the penalty or the liability created u/s 4 of the Essential Services Maintenance Act, Section 8 of the aforesaid Act prevails over Section 9(2) proviso, of the Wages Act. Thereby, the necessary action to be taken by the Management by statutory operation is under the Essential Services Maintenance Act alone. In *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, the decision relied on by Sri Prabhakar Rao clearly supports this conclusion. In paragraph 28 it was held :

"... the compensation claimed and awarded is a direct reparation for the loss of profits of the employer caused by the illegal strike. If so, it is contended by the respondents, the remedy for the illegal strike and its fall out has to be sought within the statute and not de hors it. If this stand of the workers is right, the remedy indicated in Section 26 of the Act viz., prosecution for starting and continuing an illegal strike, is the designated statutory remedy. No other relief outside the Act can be claimed on general principles of jurisprudence. The result is that the relief of compensation by proceedings in arbitration is contrary to law and bad."

The same ratio applies to the facts in this case. Once it is found that the remedy under proviso to Section 9(2) of the Wages Act is inconsistent with penal consequences u/s 4 of the Essential Services Maintenance Act, then the recourse could be had only to Section by operation of Section of Section 8 thereof and not

de hors it. Parbhanti T. C. v. G. V. Bedekar (AIR) 1960 Bom. 278 relied on by Sri Reddappa Reddy is not applicable to the facts in this case. Therein, after the Corporation was created, under Chapter IV-A of the Motor Vehicles Act, the application for permits u/s 47 was applied for. The contention raised was that Section 68-B of the Act creates special procedure engrafting non-obstante clause; the S.T.S. or R.T.A. has to issue the permits only under Chapter IV-A and that therefore they have no right to apply Section 47. This contention was negated by Mudholkar. J., speaking for the Division Bench holding that it was "in addition to but not "inconsistent with" the provision of Chapter IV. Therefore the Corporation has right to apply Section 47. It is true that the Management has got several remedies to take disciplinary proceedings against its workmen under the disciplinary regulations or under the statute. But we are concerned here with the language employed in Section 8 of the Essential Services Maintenance Act vis-a-vis the proviso to sub-section (2) of Section 9 of the Wages Act. If the contention of Sri Reddappa Reddy learned standing counsel is accepted, then it has to be read as "in addition to" but not "inconsistent with", but the construction is not permissible to be employed. It is well settled that it is the duty of the Court to construe harmoniously the effect of all the provisions of the Act and as far as possible allow the provisions of the Act to operate in the respective field but not to create inconsistency. When the language in Section 4 is specific and emphatic and the remedy under the proviso to sub-section (2) of Section 9 of the Wages Act is inconsistent with Section 4, necessarily by operation of Section 8 of the Essential Services Maintenance Act, Section 4 thereof prevails over proviso to sub-section (2) of Section 9 of the Wages Act. Then the remedy u/s 9(2) would be construed to be in addition to but not in substitution thereof. Such a construction is not permissible. Accordingly, the action take by the Management in deducting three day's salary is clearly without authority of law and is without jurisdiction. The writ petitions are accordingly allowed and the impugned orders are quashed. No costs.