

(1996) 05 SC CK 0113

In the Supreme Court Of India

Case No : Civil Appeal No. 4041 of 1985

Hal Employees" Union

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 22, 22(3), 24(3)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4

Citation : (1996) 5 AD 12 : (1996) 3 ALT 43 : (1996) 73 FLR 1722 : (1998) 4 JT 488 : (1996) 2 LLJ 930 : (1996) 4 SCALE 475 : (1996) 4 SCC 223 : (1996) 2 SCR 238 Supp : (1996) 2 SLJ 47

Hon'ble Judges : Sujata V. Manohar, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : A.K. Goel, for the Appellant; S. Muralidhar, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal by special leave arises from the award of the Industrial Tribunal, Lucknow made in Adj. Case No. 7708/83 on 28.4.1984. The admitted facts are that the respondent declared lock-out from 4/5th June, 1978 and wages to the workmen were deducted for that period. An industrial dispute was raised which came to be referred u/s 4-K of the U.P. Industrial Disputes Act, 1947, the State Act which is equivalent to Section 10(1)(c) of the Industrial Disputes Act, 1947, the Central Act. The Tribunal after considering the entire evidence on record and appreciating the diverse contentions raised by the counsel on either side, recorded, as a fact, the finding that the lock-out declared by the respondent w.e.f. 4/5th June, 1978 to 18th June, 1978 was both just and lawful; hence the question of any relief to the workmen does not arise.

2. It is contended by Shri A.K. Goel, learned Counsel for the appellant, that on the own showing of the respondents it is not a case of total strike by the rival unions; there was production to the extent of 15% which would show that the strike which ended on May 31, 1978 and the lock-out declared on 4/5th June,

1978 was not due to continuing strike and that, therefore, the management was not justified in reaching the conclusion without following the procedure prescribed u/s 6-s(2) of the State Act which is equivalent to Section 22(3) of the Central Act, to declare lock-out. With a view to appreciate the contention, it is necessary to extract the relevant provisions of the Act.

3. Section 22 falls in Chapter V which deals with strikes and lock-outs. It prohibits strikes and says that no person employed in public utility service shall go on strike in breach of contract as enumerated in Clauses (a) to (d) of Sub-section (1) thereof. Sub-section (2) prohibits declaration of lock-out for the circumstances mentioned in the Clauses (a) to (d) of Sub-section (2). Sub-section (3) postulates that "the notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services."

4. Section 24 declares what are illegal strikes or illegal lock-outs. It says that "a lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock out shall not be deemed to be illegal". It is seen that the strike continued until 4/5th June, 1978 and the lock-out was continued upto 18th June, 1978. In view of the finding recorded by the Tribunal that there was an illegal strike in consequence of which the lock-out was declared by the respondent-Management, it cannot be declared that the lock-out is illegal. On that finding, the question arises: whether they are entitled to the payment of wages for the period of lock-out?

5. The controversy as regards illegal strike and payment of wages for that period was considered by this Court in *Syndicate Bank and another Vs. K. Umesh Nayak*, by a Constitution Bench. It was held that "no-work no-pay" is the principle applicable to public utility services; wages during strike period would be payable only if the strike is both legal and justified but not payable if strike is legal but not justified or justified but illegal. The strike may be of different forms like go-slow, work to rule, refusal to work overtime, irritation strike etc. we are bound by the ratio of the said Constitution Bench judgment which applies to declaration of the lock-out which is the consequence of illegal strike organised by the workmen. The lock-out is both legal and justified in the present case. As a result, the workmen are not entitled to the payment of wages for the period during which the lock-out continued.

6. The appeal is accordingly dismissed. No costs.