**(1996) 05 MP CK 0004**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition No. 748 of 1992 (G)

Jiyajeerao Cotton Mills Ltd. APPELLANT

Vs

Mazdoor Congress and Others RESPONDENT

**Date of Decision :** 17-05-1996

**Acts Referred:**

Constitution of India, 1950 — Article 226
Madhya Pradesh Industrial Relations Act, 1960 — Section 31, 61, 64A

**Citation :** (1996) 2 MPJR 427

**Hon'ble Judges :** T.S. Doabia, J

**Bench :** Single Bench

**Advocate :** P.L. Dubey, with Mr. R.V. Sharma, for the Appellant; H.N. Upadhyaya, for the Respondent

**Final Decision :** Dismissed

# Judgement

T.S. Doabia, J.

The brief facts for the purposes of this writ petition preferred under Article 226 of the Constitution of India are as under:

The petitioner-mill issued a notice, copy whereof is annexure P/l. This was a notice by which the workmen were informed that there would be a lay-off. The reason given for this was that the Madhya Pradesh Electricity Board (hereinafter referred to as the Board) has cut-off the electric energy supply to the petitioner-mill. This happened on 28fh of April, 1992. On the next day that is on 29th of April, 1992, an application was preferred under sections 31, 61 and 64A of the Madhya Pradesh Industrial Relations Act, 1960 (hereinafter referred to as the Act of 1960). This was preferred by the Mazdoor Congress, Gwalior, Two prayers were made. One was that the lay-off as ordered by the petitioner-mill be declared illegal and the second was that during the pendency of the litigation, the petitioner-mill be directed to pay the compensation to the workmen whose cause was expoused by the respondent-union. It be seen that the term used in the application is ''wages''.

The matter was adjudicated. An order was passed on 1st of May, 1992. Copy of this is annexure P/7. A direction was given that the workmen would be entitled to wages at the same rate at which they were being paid their salaries. Against this, an appeal was preferred. This appeal stands dismissed. Copy of this order passed in appeal is annexure P/9. Both these orders have been impugned in this petition.

The learned counsel for the petitioner has argued that the labour court had no jurisdiction to adjudicate upon this dispute. According to him, the matter concerning grant of wages would not fall within Sehedule II of the Act. It is accordingly argued that the labour Court acted totally without jurisdiction. It is further argued that the petitioner-mill was not able to operate because of factors beyond its control. According to him, non-supply of power would be a valid ground for the petitioner-mill to resort to lay-off. For this, reliance is being placed tin the definition of lay-off as given in section 2kkk of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act of 1947). For facility of reference, this section be noticed as under :

"2. Definitions:

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(kkk) "lay-off (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Explanation. - Every workman whose name is borne on the muster roll of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause:

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day :

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for the part of the day."

Thus, the arguments of the learned counsel for the petitioner are ;

(i) that, the labour Court had not jurisdiction because the matter in question pertaining to wages was not covered by Schedule II;

(ii) that, the petitioner-mill had been successful in making out a case for lay-off, and, therefore, the question of making any payment would not arise. Reliance has been placed on decisions in the cases reported as The Rashtriya Mill Mazdoor Sangh, Parel, Bombay and Another Vs. The Apollo Mills Limited and Others, and Prakash Cotton Mills Pvt. Ltd. Vs. Rashtriya Mills Mazdoor Sangh, ; and

(iii) that, it has also been argued that in view of the provisions contained in section 25-N of the Act of 1947, even if it be presumed that some compensation could be given then, this compensation should not be more than fifty percent of the wages which a workman is to get for forty-five days.

The learned counsel for the respondents has argued that mis is a case which is squarely covered by Schedule II. According to him, this would not only fall under item No. 7 but also under item No. 6. For this, reliance is being placed on a decision given by the Supreme Court in Priya Laxmi Mills Ltd. Vs. Mazdoor Mahajan Mandal, Baroda, ; and The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co., . In the first case i. e. Priya Laxmi Mills Ltd. (supra), the Supreme Court was dealing with a case arising out of Bombay Industrial Relations Act, 1947. According to the counsel, the provision which was being interpreted in Priya Laxmi Mills Ltd. case are in pari materia with schedule II, clause 6 and 7 of the 1960 Act. He has also pleaded that while determining the question as to whether compensation is payable or not, this Court as also the Labour Court has to form a prima facie view as to whether a case of lay-off was made out or not.

Strictly speaking, the question as to whether there was a legal lay-off or not is yet to be determined.

According to the respondent, the non-availability of power supply would be attracted only when this is an act of the Board. Where the company fails to pay the bill and this result in the closure, this would be a case which would not fall within the term ''lay-off. For this, reliance is being placed on a Division Bench decision of the Bombay High Court reported as ILAC Ltd., Ors. v. Union of India & ors., 1995 LLR 883.

I have considered the matter. It is not in dispute that electric energy came to be disconnected on account of non-payment of dues to the Board. If this be the position then, strictly speaking, the case would not fall within the parameters of provisions dealing with ''lay-off. The decision of the Bombay High Court reported as ILAC Ltd., (supra) is fully attracted to the facts of this case. The relevant observations be seen. These read as under :

".....Thereafter, the Company laid-off the workmen on the ground that they were not in a position to pay electricity charges because Tata Power Company increased fuel adjustments charges. As correctly held by Deputy Commissioner of Labour, this is not a case of shortage of electricity supply as contemplated u/s

 

25M of the I. D. Act. It is the case of non-payment of electricity bills and, therefore, permission cannot be granted. Moreover, we find that in the entire petition the Company has pleaded that the increase in fuel adjustment charges by Tata Power Company which are statutory in nature were arbitrary. The Deputy Labour Commissioner was not concerned with the said challenge. In any event we find from the record that both the Government and Tata Power Company gave concession and opportunity to the Company to make the payment but the company failed to make the payment and in the circumstances disconnection took place. In fact, the entire exercise resorted to by the Company was malafide. It was only to defeat the rights of the workmen. Non-payment of electricity charges cannot be the ground to effect lay-off.. The above reasoning given by the Division Bench of Bombay High Court would be attracted to the facts of this case also, therefore, the contention raised by the learned counsel for the petitioner cannot be accepted.

The question as to the jurisdiction of the labour Court may also be examined. This question was dealt with in Priya Laxmi Mills Ltd. Vs. Mazdoor Mahajan Mandal, Baroda, . The observations made in para 15 are relevant and may be noticed:

".... Even according to the dictionary meaning, lay off means to discontinue work of activity to dismiss or discharge temporarily. When workers are in employment and they are laid off, that immediately results in their unemployment will clearly come under item 6 (ii) in Schedule 111 of the Act. It is not disputed that '' ''unemployment'''' is an industrial matter as defined u/s 3 (18) of the Act. Since unemployment is an industrial matter under item 6 (ii) of Schedule III to the Act, the lock-out which has been found by the Labour Court to have direct connection with lay-off is clearly illegal u/s 98 (1) (a) of the Act."

The other decision which deals with this aspect of the matteris The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co., .

In view of the clear position enunciated by the Supreme Court in Priya Laxmi Mills Ltd., (supra), the argument raised by the learned counsel for the petitioner that the labour Court had no jurisdiction to deal with this aspect of the matter is without merit and is rejected.

In the net result, this petition is found to be without merit and is dismissed, with costs. Costs rupees one thousand only.

 