

(1966) 10 AHC CK 0029
In the Allahabad High Court

Kanhaiya Lal Gupta

APPELLANT

Vs

Ajeet Kumar Dey and Others

RESPONDENT

Date of Decision : 05-10-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Payment of Wages Act, 1936 — Section 15, 7

Citation : (1967) 2 LLJ 761

Hon'ble Judges : G.C. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.C. Mathur, J.—The petitioner is an employer admittedly employing less than fifty persons. For certain trade reasons the employer laid off five workman who are respondents 1 to 5 In this petition for a period of seventeen days In January 1961. The employer did not pay them any wages for the period of lay-off. Respondents 1 to 5 made an application u/s 15 of the Payment of Wages Act before the City Magistrate, who was the authority appointed under the Payment of Wages Act for the purpose. By this application these respondents claimed that they had Illegally been deprived of their wages for the period of lay-off and prayed that a direction be given to the employer to pay them the wages for this period. The City Magistrate held that the employees were entitled to the wages for this period of lay-off and that the employer Lad made deductions not permissible u/s 7 of the Payment of Wages Act. He accordingly allowed the applications and directed the employer to pay to the employees the wages deducted. The employer did not file any appeal against the order of the City Magistrate but has directly challenged the order in this writ petition.

2. Learned Counsel for the petitioner has contended that the employees were not entitled to any wages for the period of lay-off and that accordingly the authority under the Payment of Wages Act had no jurisdiction to give any direction to the employer to pay wages for the period of the lay-off. Admittedly the employer

employs less than fifty persons and, therefore, by virtue of the provisions of Section 6J of the Uttar Pradesh Industrial Disputes Act, the provisions of Section 6K for payment of compensation for the period of lay-off are not applicable. In other words, In the present case no compensation in lieu of wages for the period of lay-off was payable u/s 6K of the Uttar Pradesh Industrial Disputes Act. The real question which arises for consideration in this case is whether the employer was entitled to lay off its workmen without payment of wages. In *Workers of Dewan Tea Estate v. their management* 1964 1 L.L.J. 358 a question arose for consideration before the Supreme Court whether an employer had an inherent right to lay off its workmen. It was held there that an employer did not have any inherent right to lay off its workmen unless "the layoff satisfied the requirements of Section 2(kkk) of the Central Industrial Disputes Act which defines lay-off. It appears that in that case lay-off was provided for by the standing orders but it was not lay-off as contemplated u/s 2(kkk). Laying off a workman is somewhat similar to suspending him. In both cases the employer takes no work from the workman for the period of suspension or lay-off. The only difference is that in the case of suspension the work is not taken on account of some alleged misconduct of the workman and in the case of lay-off work is not taken on account of some difficulty experienced by the employer. With regard to suspension the Supreme Court has in *Hotel Imperial v. Hotel Workers' Union* 1969 2 L.L.J. 644 laid down as follows:

The power of the employer to suspend an employee under the ordinary law of master and servant in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

In my opinion, these principles are equally applicable to lay-off. In the absence of any term in the contract of service or in the statute or in the statutory rules or standing orders an employer has no right to lay off a workman without paying him wages. In the present case admittedly there are no standing orders and no terms of contract between the parties have been shown which provide for lay-off of workmen without payment of wages. As already observed, the provisions regarding payment of compensation for lay-off in the Uttar Pradesh Industrial Disputes Act are inapplicable to the workmen concerned in the present case. Therefore, it is clear that the employer was not entitled to lay off respondents 1 to 5 without payment of wages. The deduction of wages for the period of the lay-

off was not a deduction permissible u/s 7 of the Payment of Wages Act, and the authority under that Act had jurisdiction to direct the employer to pay the wages which had been Illegally deducted by the employer. The direction given by the City Magistrate is perfectly valid and legal direction.

3. For the reasons stated above there it force In this writ petition. It is accordingly dismissed with costs.