
(2009) 05 DEL CK 0369

In the Delhi High Court

Case No : Writ Petition (C) No. 1681 of 2007

R.K. Sharma

APPELLANT

Vs

Bharat Litho

RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 227

Industrial Disputes Act, 1947 — Section 10(3), 10A(3A), 10A(4A), 2, 22

Citation : (2009) 05 DEL CK 0369

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Pravin Sharma, in W.P.C No. 1681/2007, for the Appellant; Sanjay K. Shandilya, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—This order shall dispose of both the petitions bearing WPC No. 1681/2007 and WPC No. 1682/2007.

2. The present petitions have been filed by the two workmen under Articles 226 & 227 of the Constitution of India for issuance of writ against order dated 4.5.2005 of the Labour Court in WPC No. 1681/2007 and order dated 7.5.2005 in WPC No. 1682/2007.

3. Brief conspectus of facts as set out in the petition are as under:

4. Petitioners/workmen filed two separate petitions before the Industrial Tribunal alleging that they were in service with the Management M/s Bharat Litho for the last four years as skilled workmen with last drawn wages of Rs. 4500/- p.m. The management was not providing statutory benefits and when a demand for the same was raised, the Management got annoyed. The workmen joined union and raised a general demand dispute. In order to put an end to the general demand dispute, the management without serving any charge sheet, terminated their services on 24.10.99. The complaint was made to the labour department through

union but despite intervention by the labour inspector, they were not given duty. The demand notice was sent on 25.10.99 to which no reply was given by the management. The management did not pay retrenchment compensation and the termination of their services was challenged as illegal. The Management did not appear during conciliation proceedings due to which conciliation proceedings failed and since then the workmen were unemployed and could not get any services despite their best efforts, they claimed that they were entitled to reinstatement with continuity of service and full back wages.

5. Short controversy arising in the present petitions to be dealt with by this Court is whether the respondent management could direct the petitioners to give an undertaking for not going on strike prior to their joining back with the respondent.

6. Counsel for the petitioners submitted that strike is a legitimate right of the workman and therefore, the petitioners rightly declined to execute the undertaking before reporting back to the respondent. Counsel for the petitioners further submitted that respondent could not have coerced the petitioners to first execute an undertaking and then join the respondent. Counsel also submitted that the petitioners were permitted to join back in the year 2004 but at that point of time no such condition of executing the undertaking was put forth by the respondent. Counsel for the petitioners also submitted that petitioners never had received any letters or reminders from the respondent to join back on duties rather the petitioners have been almost sitting at the gate of the respondent showing their willingness to join their duties. Counsel for the petitioners also submitted that the respondent failed to prove on record that the petitioners had abandoned their services. Counsel also submitted that in the entire written statement filed by the respondent management before the Labour Court no such stand was taken by the respondent that any illegal strike was declared by the petitioners along with the other workmen or the petitioners were to execute an undertaking and on the refusal of which they were not permitted to join the respondent. Based on these submissions Counsel for the petitioners submitted that the petitioners are entitled to the entire back wages w.e.f. the date of illegal termination till the day of their reinstatement. Counsel for the petitioners also referred to the letter sent by the office of the Labour Commissioner to the respondent management wherein the reference to the said undertaking has been made. In support of his arguments, the petitioners placed reliance on the judgment of the Apex Court in G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., .

7. Refuting the said submissions of the Counsel for the petitioners, the Counsel for the respondent submitted that after declaring an illegal strike almost all the workmen had joined the respondent except four workmen and out of four only two had raised the Industrial Dispute. Counsel further submitted that after the declaration of an illegal strike there was nothing wrong on the part of the respondent management to put forth such a condition for not going on such a

strike in future so as to ensure smooth functioning of the factory of the respondent as well as to enforce discipline amongst the workers. Counsel thus submitted that when large majority of the workmen could execute such an undertaking, then, the petitioners could also have executed the same. Counsel thus submitted that the petitioners deliberately did not join their duties despite various letters and reminders sent to them. Counsel further submitted that petitioners in fact secured gainful employment during the intervening period and this fact has been admitted by the petitioners in their cross-examination wherein they have stated that they were drawing around Rs. 600/- per month. The contention of the Counsel for the respondent is that the petitioners had deliberately suppressed this fact of their gainful employment and it is only in the cross-examination this could be elicited, that in fact, they were working on some job wherefrom they were earning around Rs. 600/- per month. Counsel for the respondent also submitted that even with the execution of the such an undertaking statutory rights of the parties which are available under the various statutes are not barred.

8. In support of his arguments, the Counsel for the respondent placed reliance on the following judgment.

(1) Ajay Enterprises Ltd. v. Secretary (Labour) Govt. of NCT of Delhi and Ors. 134 (2006) DLT 227.

9. I have heard Counsel for the parties and perused the record.

10. First of all, it would be worthwhile to consider provisions on strike under Industrial Disputes Act, which are reproduced as under:

Section 2(q) "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;

Section 22. PROHIBITION OF STRIKES AND LOCK-OUTS.- (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; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) No employer carrying on on any public utility service shall lock-out any of his workmen-

(a) without giving them notice of lock-out as hereinafter provided, within six

weeks before locking-out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(3) 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) The notice of strike referred to in Sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in Sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in Sub-section (1) or gives to any person employed by him any such notices as are referred to in Sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

Section 23. GENERAL PROHIBITION OF STRIKES AND LOCKOUTS.- No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;

(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under Sub-section (3A) of Section 10A; or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

Section 24. ILLEGAL STRIKES AND LOCK-OUTS.- (1) A strike or a lockout shall be illegal if- (i) it is commenced or declared in contravention of Section 22 or Section 23; or

(ii) it is continued in contravention of an order made under Sub-section (3) of Section 10 [1da-136 or Sub-section (4A) of Section 10A;

(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under Sub-section (3) of Section 10 or Sub-section (4A) of Section 10A.

(3) 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.

Section 25. PROHIBITION OF FINANCIAL AID TO ILLEGAL STRIKES AND LOCK-OUTS.- No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

11. Every right comes with corresponding duties. Most powerful rights have more onerous duties attached to them. Today, in each country of globe whether it is democratic, capitalist, socialist, right to strike is a legitimate right of the workers. But this right must be the weapon of last resort because if this right is misused, it will create a problem in the production and financial profit of the industry. This would ultimately affect the economy of the country.

12. In India, right to protest is a fundamental right under Article 19 of the Constitution of India. But right to strike is not a fundamental right but a legal right and with this right statutory restriction is attached in the Industrial Dispute Act, 1947.

13. A strike is the withholding of labour by workers in order to obtain better working conditions or work stoppage caused by the mass refusal of employees to perform work. Such withholding of labour is generally accompanied by demonstrations, such as picketing, parades, meetings. A strike usually takes place in response to employee grievances. Strikes became important during the industrial revolution, when mass labour became important in factories and mines. Most strikes are undertaken by labour unions during collective bargaining. The strike is typically reserved as a threat of last resort during negotiations between the company and the union.

14. In India unlike America right to strike is not expressly recognized by the law. The Trade Union Act, 1926 for the first time provided limited right to strike by legalizing certain activities of a registered trade union in furtherance of a trade dispute which, may otherwise, be in breach of common economic law. Now days a right to strike is recognized only to limited extent permissible under the limits laid down by the law itself, as a legitimate weapon of Trade Unions. The right to strike in the Indian constitution set up is not absolute right but it flow from the fundamental right to form union. As every other fundamental right is subject to

reasonable restrictions, the same is also the case to form trade unions to give a call to the workers to go on strike and the State can impose reasonable restrictions.

15. In the All India Bank Employees' Association Vs. National Industrial Tribunal and Others, , the Supreme Court held,

the right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in Clause (4) of Article 19 but by totally different considerations.

16. Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike. Under the Industrial Dispute Act, 1947 the conditions are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal. Strikes are said to be illegal when the provisions of Section 22 to 24 are not followed.

17. The issue of of undertaking by the petitioners before their joining back has not been discussed by the tribunal in the award and the petitioners did not raise the same plea in clear terms and even the management merely said that the workmen were not allowed to join back because they themselves remained absent even upon management's calling upon them several times by writing letters to join back. Although, no specific stand was taken by either of the parties before the tribunal on execution of undertaking. But in the notice dated 1.11.99 of the conciliation officer, notice dated 4.1.2000 of the Dy. Labour Commissioner and in cross examination of MW1 Sh Sri Bhagwan there has been clear mention that the management allowed workmen to join their duties after giving an undertaking for not to go on strike and of good conduct. Therefore, it is relevant to discuss the contention of Learned Counsel for the petitioners that if there is a legal strike, the conditions as mentioned in the undertaking cannot be imposed on the workmen as a Condition precedent for joining duty. As regards undertaking on good conduct it is no more in dispute that such undertakings may be taken by the employer before the workman is allowed to resume his services.

18. In this regard in Glaxo Laboratories Employees Union and Glaxo India Limited 1996(3) LLR 266 : 1996(4) SCT 514 (Guj). In that case the undertaking was sought for in the following form:

I _____ Employee No. _____ hereby seek permission to enter the factory premises as I am not on strike and I undertake that during my shift I will not go on strike. I will ensure normal output by performing my assigned duties and I will maintain discipline. I accept that in case I fail to abide by my above undertaking, I will render myself liable to action being taken against me.
Signature.

19. It was held in that case that on scrutinizing of this undertaking, it was clear that there is no change of any condition of service of the workmen. The

undertaking was more in form of an assurance to do the normal work with discipline which was necessary having regard to the prevalent situation. It is also observed that it is not a condition of service of a workman to force his entry in the factory premises, when on strike and the workmen enter the premises because of the implied licence and such permission of the employer to enter the factory premises cannot be described as change in conditions of service within the meaning of Section 9A of the Act.

20. Also, this Court in *Ajay Enterprises Ltd. v. The Secretary (Labour) Govt. of NCT of Delhi, The Assistant Labour Commissioner Govt. of NCT of Delhi and Hotel Mazdoor Union (Regd.)* 134 (2006) DLT 227 relied on the decision in *Glaxo Laboratories Employees' Union v. Glaxo India Ltd.* 1996 LLR 885 Bom High Court wherein it was observed that obtaining of an undertaking by the management cannot be described as a change in the conditions of service within the meaning of Section 9(a). In that case, the workmen were resorting to flash strike, go slow and slogan shooting - Management of company required each workman to execute undertaking that he will not go on strike during his shift and would maintain discipline and ensure normal output. Court upheld taking of such undertaking.

21. Had the undertaking been in the nature of a confession, viz. that the strike was illegal and that after entering the factory they would not damage the property or that they would never ever go on strike in future for whatever reasons or besides giving assurance of not participating in such illegal strikes in future and seeking pardon for having participated in the illegal strike or the workers were required to state that it would be open to the employer to impose any penalty on them for participating in the illegal strike and that penalty would be binding on them and that they would not question the validity of imposition of such penalty, such undertakings can not be permitted being totally illegal. But the undertaking referred above and discussed in the aforesaid judgments do not suffer from any fallacy.

22. In the instant case, the undertaking was sought to the effect that after entering the factory, during the shift, the workmen would not go on strike and will ensure normal output by performing the assigned duties and will maintain discipline. In this regard, the undertaking is reproduced as under:

Mein aapne dil se aapko viswas dilate hu ki

1. Mein factory mein pravesh karne key uprant hadtal nahin karunga aur imandari se tatha sucharu roop se pura utpadan dunga.

2. Mein apna vyavhar anusashan mein rakhunga.

23. Clearly, such an undertaking was merely an assurance that the petitioners would not enter factory premises and therefore will not go on strike. Such an undertaking is clearly a safety measure or a precaution taken by the management. The same does not mean that the petitioners are perpetually

disallowed to go on strike. Be that as it may, strike should always be resorted to as the last resort and efforts should be made for amicable settlement by sitting across the table and raising demands with the management. Such undertaking was sought with a view to enforce discipline and to avoid untoward incidents within the premises and therefore, the management was justified in seeking such assurance from the employees who wanted to enter the premises for work. Thus, I do not find any infirmity in the respondent management's taking such an undertaking.

24. As regards wages payable to the petitioners, in this regard, the settled legal position is reflected in the decision of the Supreme Court in *Canara Bank and Ors. v. R. Jambunathan and Ors.* reported in 1994 (5) S.C.C. 573, in which endorsing the view taken in *Bank of India Vs. T.S. Kelawala and Others*, the Supreme Court in paragraph 25 of its judgment held that the workers were not entitled to wages for the strike period even if the strike is legal. To be entitled to the wages for the strike period, the strike has to be both legal and justified. Whether the strike is legal or justified, is a question of fact to be decided on the evidence on record. Under the Act, the question has to be decided by the Industrial adjudicator, it being an Industrial dispute within the meaning of the Act. The Tribunal has, after considering the relevant facts and circumstances of the case, come to the conclusion that the petitioners themselves did not conduct themselves properly, as they refused to take up the job when the management requested them to.

25. In this regard, relevant paragraph in *Bank of India Vs. T.S. Kelawala and Others*, , is reproduced as under:

26. The decisions including the one impugned in this appeal which have taken the view which is either contrary to or inconsistent with the above conclusions, have done so because they have proceeded on certain wrong presumptions. The first error, as we have pointed out at the outset, is to confuse the question of the legitimacy of the strike as a weapon in the workers' hands with that of the liability to lose wages for the period of strike. The working class has indisputably earned the right to strike as an industrial action after a long struggle, so much so that the relevant industrial legislation recognises it as their implied right. However, the legislation also circumscribes this right by prescribing conditions under which alone its exercise may become legal. Whereas, therefore, a legal strike may not invite disciplinary proceedings, an illegal strike may do so, it being a misconduct. However, whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. The liability to lose wages does not either make the strike illegal as a weapon or deprive the workers of it. When workers resort to it, they do so knowing full well its consequences. During the period of strike the contract of employment continues but the workers withhold their labour. Consequently, they cannot expect to be paid.

26. In the case at hand, the workmen went on strike from 17/10/99 to 29/2/2000 and the petitioners remained absent w.e.f. 1/3/2000 and the said

workmen resumed their duty on 27/1/2004 in the presence of the Labour Inspector and since then are working with the respondent management. Considering the law laid down in T.S. Kelawala's case (Supra), I do not think that the tribunal erred in disallowing the wages during which the petitioners went on strike and did not join their duties till 27/1/2004.

27. In view of the foregoing discussion, there is no merit in the present petitions, therefore, they are dismissed.