

(2001) 06 KAR CK 0061
In the Karnataka High Court
Case No : Criminal Petition No. 1387 of 2001

Smt. Savitri Samson

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-06-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439

Citation : (2001) CriLJ 3164 : (2001) ILR (Kar) 4080 : (2001) 4 KarLJ 283 :
(2001) 4 KCCR 222 SN : (2001) 3 RCR(Criminal) 638

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : Sri Ravi B. Naik, for the Appellant; Sri M. Maregouda, Additional State Public Prosecutor, for the Respondent

Judgement

T.N. Vallinayagam, J.—In both these writ petitions the award dated May 8, 1995 in Ref. No. 69/1984 passed by the respondent are questioned. One is by the Management (W.P.No. 7917/1996) wherein the award in so far as it relates to declaration of lockout to be unjustified and grant of wages for the said period i.e., from December 24, 1983 to February 8, 1984 is sought to be quashed and another (W.P. No. 25545/1996) is by the workmen to quash the finding in so far as it relates to strike on December 23, 1983 by all workers and remaining absent from February 9, 1984 to April 16, 1984 by a section of workmen and workers are entitled to full wages for the period from February 9, 1984 to April 16, 1984.

2. As common order is involved, the writ petitions are taken up together and disposed of by common order.

3. The petitioner in W.P.No. 7917/1996 engaged in manufacture of Indian Made Liquor. There are about 158 workmen and the 2nd respondent union placed a charter of demands on November 22, 1980 which was in force till October 31, 1984 from November 1, 1980. It is contended that the workmen resorted to illegal strike from December, 1983. The management claimed that the office bearers and executive committee members of the union entered into the

Administrative office of the petitioner company unauthorisedly and instructed the administrative staff not to work.

4. On the other hand, the workmen claimed that police force and goondaism was used against them and the leaders and active members of the workers union were charge sheeted. On December 22, 1983 the union wrote a letter to the management and at about 1 p.m. a procession was taken around the administrative office inside the factory by the workmen. It is alleged by the management that one B.K. Narasimhamurthy, the Assistant Security Officer was manhandled and the workmen resorted to go slow tactics in the factory. Though the notice to give "go slow tactics" and maintain discipline and normal production in the factory did yield any result, the management put up several notices and there is no response. It was claimed that the workmen were working on the machines with loose clothes such as shawls on them were advised that it was unsafe to work on moving machines if they were not observing safety rules and regulations. The agitation started right from the middle of October 1983 by the workmen. A lockout was declared with effect from December 24, 1983 and the dispute was raised and the reference was made by the Government on October 30, 1984. The dispute is in regard to issue 1(a) and 1(b) were settled by the joint memorandum of settlement. Therefore, these issues were dropped. The Industrial Tribunal was required to decide the issues 2 and 3 pertaining to justification of lockout with effect from December 24, 1983 to February 8, 1984 and also absenting themselves from February 9, 1984 in respect of still house, boiler house, water treatment, maintenance and power house departments. Before the industrial Tribunal, evidence was led by both the parties and ultimately, the impugned award came to be passed on May 8, 1995.

5. The Tribunal held that the declaration of lockout with effect from December 24, 1983 to February 8, 1984 is not justified and the workmen are entitled for back wages for the said period. (2) The strike on December 23, 1983 was not justified. (3) Issue regarding continuance of lockout from February 9, 1984 up to April 16, 1984 though the lock out was lifted by the management in respect of the department of Still House, Boiler House, Water Treatment and Maintenance would not arise for consideration because workmen refused to work and they have not been entitled for any wages for that period. (4) The workmen are not justified in remaining absent from work from February 9, 1984 till April 16, 1984 in the departments after (sic) lockout was (sic) lifted.

6. Challenging the finding regarding justification of the lockout from December 24, 1983 to February 8, 1984 Kasturi, learned counsel appearing for the management contended that in Ex.M-4 the production figure had come down and deliberate "go slow" had been committed. But the Tribunal observed that there is no agreement to constitute normal production while arriving at the loss of production and the days where maximum production was achieved were taken into consideration. This finding is based without taking the production data and other factors like availability of new materials, the average production during go

slow was shown. Though there was a denial of go slow policy, the Union admitted in Ex.P.23 that the workers were not able to pick level production thus proving go slow tactics taking into consideration the threatening nature of workmen, stay in strike, and safety of highly inflammable raw materials and finished products while declaring lockout and there was also an injunction order in O.S. No. 9/1984. But despite the said order, the workmen obstructed the officials to attend the factory. In spite of partial lifting of lockout, the workmen had not reported for duty. But this did not weigh the Tribunal in arriving at the just conclusion. The weightage ought to have been given to the evidence of MW-1 regarding storage of volatile substance of 53,000 bulk liner of rectified spirit and one lakh of ENA valued at Rs. 8,00,000/-. The fact of assault on the employees cannot be disputed but merely because police officer was not examined and it was not known who had assaulted the factum cannot be left out for consideration. Go slow tactics is certainly more serious than the total strike and the observations of the Apex Court that go slow tactic is like slow poisoning has not been considered by the Tribunal. Go slow has been amply proved by the evidence and exhibits which can be found at by comparing the figures of normal production and the production given even after lifting the lockout partially in some departments the workmen did not report for work and the fact of go slow was clearly proved coupled with the assault of the officer of the Tribunal. Consequently, the lock out was justified. Having regard to the violence resorted to by the workmen and there being no remorse (sic) or assurance that normalcy would be restored, the lockout could not be lifted. Though lockout was lifted, no more workmen resumed the work and the strike was not called off as admitted by MW. 1 and the strike was continued during the entire period of lockout and therefore, the question of non payment of wages for the period of strike is justified. The grant of wages for the period between December 24, 1983 to February 8, 1984 amounts to granting of wages for the period of strike already held unjustified by the Tribunal. When during the substance of settlement dated October 27, 1980 wherein the workmen had agreed not to make any additional financial demands, resorting to strike by the workmen is not justified and consequently, the management was compelled to declaration of lockout which is certainly justified. The efforts made by the management before the Conciliation Authority to bring normalcy in the production and also the industrial discipline prior to declaration of lockout was not considered by the Tribunal. Thus, that part of the award was assailed.

7. On the other hand, the learned counsel in particular drew the attention of the Court to letter dated December 19, 1983 wherein the union has admitted that peak level production could not be given. This is what the President has written to the Assistant Labour Commissioner "of course, the workers are not able to give the peak level production, but they are giving the normal production." Thus, in the very same Ex.M-23 it was admitted by the Union itself that "hence Industrial unrest is prevailing in the organization." The finding of the Tribunal at paragraph-13 of the award is to the following effect:

"From Ext. M.4, it was revealed that the production figure has come down and deliberately go slow have been committed."

In Ext.M. 14 series, the production during go-slow and the average production, production during "go slow" has been given. In Ext. M. 15 and M. 16, the average production and the production during go slow is shown. The learned counsel further refers to the FIR filed against the workers under Ex.M-37 to M-41 wherein it is complained by the co-worker that they were prevented from attending the work. There is a mention about the names of 10 workers and the charge sheet was filed in that regard. The admission made by the worker to the following effect was relied upon by the management:

"We started agitation to press our demand, such as slogan shouting before entering the job and entering the premises and after the job hours and during lunch time. So far as the production it was normal. On December 23, 1983 one day token strike demanding withdrawal of the charge sheet was held by us. No untoward incident occurred on December 23, 1983. On December 24, 1983 management declared lock- out by a notice. Union wrote a letter to lift the lock-out. That letter is marked Ex.M-53 dated, December 24, 1983. On February 8, 1984, the management put up a notice informing that certain departments and their workmen are to work from February 9, 1984. Power house and maintenance. In these said departments the workmen constituted 30% of the total workmen. The management adopted this method in order to divide the union. The union replied by a letter February 9, 1984 it is Ex.M-36. No workman of those departments did resume the work, demanding resumption to all the workmen. I see the letter dated, March 3/6, 1984. They are marked Exs.M-56 and M-57. All the workmen were allowed to work on April 16, 1984 in pursuance of settlement Ex.M-45. The workmen who were called upon to attend duty after lifting the lock-out as per Ext.M.33 did not attend the duty. It is not true to say that the management asked for an undertaking by the workman for good conduct and we did not give such undertaking. We have not given in writing that the strike on December 23, 1983 was called off. Witness says that they have orally called off the strike on December 23, 1983. We were doing slogan shouting in support of our demand. On December 22, 1983, during lunch time at 1 p.m. we assembled in front of the office premises and raised slogans. At that time, Sri. B.K. Narasimha Murthy, Security officer pushed worker K.M. Narayana Swamy. The worker sustained injury by that push. We sent him to ESI hospital. Police tried to impose terms on us and we requested the management not to allow the police to interfere. Next day we held tool down strike on December 23, 1983 in protest against the action of the management. Management declared lock-out on 24th instant."

Thus it is contended that the finding that there is no agreement to constitute normal production is not correct and further finding that the management failed to show satisfactorily the lockout declaration is lawful is also incorrect.

8. On the other hand, Mr. Subramanya, learned counsel appearing for the

workmen who incidentally happened to be the President of the Union referred to the three grounds mentioned in the Writ petition filed by the workmen. In the first ground it is contended that the evidence of WW-1 and supported documents Ex.W-1, W-7, W-9 and W-10 has not been properly appreciated. There was sufficient justification for a day's protest by way of token strike and they are entitled to full wages. The strike demanding withdrawal of charge sheet is not unlawful and the workmen have every right to demand withdrawal of action of the management which they consider unjust and measure of victimization for legitimate trade union activities. The 2nd ground was continuation of the lock-out to a portion of workers from February 9, 1984 to April 16, 1984 (70%) of the workmen ought to have been decided as illegal and could not be rejected as the workmen refused to work. Once it is seen that lock-out from December 24, 1983 to February 8, 1984 was not justified and the continuance of the same also was not justified. The refusal to work by a section of workmen (30%) cannot afford the unjustified lock-out to a justified one in respect of the rest of the workmen that is 70% of the workmen remained absent since the action of the management in not lifting the 70% of the lock-out is discrimination and it is claimed that it is an attempt to divide the workmen and defeat their legitimate collective bargaining strength. The finding that the lifting of the lock-out only for five departments was to make plant ready for production in other departments is perverse. The 3rd ground urged was that the workmen had no other alternative but to remain absent collectively when only a portion of them is called for work and keeping the rest on streets. If the management had put a notice that others who were kept out would be called for work on subsequent dates immediately after February 9, 1984, there was every likelihood of those workers resuming work on February 9, 1984. But the management's intention was to keep the rest of the workmen indefinitely out till they starve to submission. Calling all the staff members mostly and keeping a vast number of workers out was clear attempt to create a wedge between staff and workers and there was a mala fide.

9. It was further submitted by the learned counsel that the higher wages were denied. Go slow strike conduct during the period of lockout. No notice was given withdrawing the strike even after the lockout was lifted. The learned counsel referred to Section 22(3)(c) of Industrial Disputes Act apply for all settlements including payment of D.A. under Clause-E a consolidated salary including D.A., was arrived at and of course he also pointed out that there is a Clause 10 and 12(b) no demand involving financial demand was to be made. Reference was made to Clause 13(b) as well.

The violence alleged of beating of security guard was because of the bringing of police to the scene.

10. Before dealing with the facts let me consider the legal position by referring to the authorities submitted by both the counsel.

11. On behalf of the workmen the dictum of the Apex Court in Civil Appeal No. 6346/1983 (Sadhu Ram v. Delhi Transport Corporation) decided on August 25,

1983 wherein the power of High Court to interfere with the finding of the Tribunal is dealt with in the following terms:

"The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those Tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. We do not think that it was right for the High Court to interfere with the award of a Labour Court under Article 226 on a mere technicality."

B.R. Singh and others Vs. Union of India and others, is relied upon to the following effect at p. 597 of LLJ:

"16. The right to form associations and unions and provide for their registration was recognised obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the management. This bargaining power would be considerably reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-slow, sit-in, work-to-rule, absenteeism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. These are to be found in Sections 10(3), 10-A(4A), 22 and 23 of the Industrial Disputes Act, 1947. Section 10(3) empowers the appropriate Government to prohibit the continuance of a strike if it is in connection with a dispute referred to one of the fora created under the said statute. Section 10-A(4A) confers similar power on the appropriate Government where the industrial dispute which is the cause of the strike is referred to arbitration and a notification in that behalf is issued u/s 10(3A). These two provisions have no application to the present case since it is nobody's contention that the union's demands have been referred to any forum under the statute."

The dictum in Crompton Greaves Ltd. Vs. Its Workmen, is relied upon for the proposition whether the wages is payable to workmen during the strike period and whether the strike is justified or not and whether violence was used or not is always the question of facts is to the following effect at p. 82 of LLJ:

"4. It is well-settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provisions of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period."

Another dictum in *Syndicate Bank and another Vs. K. Umesh Nayak*, , regarding jurisdiction of the High Court which is floated with the Industrial adjudicator about the legality and justifiability of the strike is relied upon to the following effect at pp. 847-851 of LLJ:

"5. The only question debated was whether, even assuming that the strike was legal, the Bank was entitled to deduct wages as it purported to do under the circular in question. It is while answering this question that this Court held that the legality or illegality of the strike had nothing to do with the liability for the deduction of the wages. Even if the strike is legal, it does not save the workers from losing the salary for the period of the strike. It only saves them from disciplinary action, since the Act impliedly recognises the right to strike as a legitimate weapon in the hands of the workmen. However, this weapon is circumscribed by the provisions of the Act and the striking of work in contravention of the said provisions makes it illegal. The illegal strike is a misconduct which invites disciplinary action which the legal strike does not do so. However, both legal as well as illegal strikes invite deduction of wages on the principle that "whoever voluntarily refrains from doing work when it is offered to him, is not entitled for payment for work he has not done."" In other words, the Court upheld the dictum "no work, no pay". Since it was not the case of the employees that the strike was justified, neither arguments were advanced on that basis nor were the aforesaid earlier decisions cited before the Court.

6. What is held in the said decisions is that to entitle the workmen to the wages for the strike period, the strike has both to be legal and justified. In other words, if the strike is only legal but not justified or if the strike is illegal though justified, the workers are not entitled to the wages for the strike period. In fact, in *India General Navigation case*, the Court has taken the view that a strike which is illegal cannot at the same time be justifiable. According to that view, in all cases of illegal strike, the employer is entitled to deduct wages for the period of strike and also to take disciplinary action. This is particularly so in public utility services.

We therefore, hold endorsing the view taken in *T.S. Kelawala* that the workers are 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 are questions 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.

9. The cessation or stoppage of work whether by the employees or by the employer is detrimental to the production and economy and to the well being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it alongwith the right of the employer to lockout and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lockout as direct action is *prima facie* unjustified. This is particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal.

The employment that workmen get and the profits that the employers earn are both generated by the utilization of the resources of the society in one form or the other, whether it is land, water, electricity or money which flows either as share capital, loans from financial institutions or subsidies and exemptions from the Governments. The resources are to be used for the well-being of all by generating more employment and production and ensuring equitable distribution. They are not meant to be used for providing employment, better service conditions and profits only for some. In this task, both the capital and the labour are to act as the trustees of the said resources on behalf of the society and use them as such. They are not to be wasted or frittered away by strikes and lock-outs. Every dispute between the employer and the employee has, therefore, to take into consideration the third dimension, viz., the interests of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer or the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect. This is true of the action in both public and private sector. The management in the public sector is not a capitalist and the labour an exploited lot. Both are paid employees and owe their existence to the direct investment of public funds. Both are expected to represent public interests directly and have to promote them.

12. As in the case of T.S. Kelawala (*supra*), in this case also the question whether the strike was justified or not was not raised. No argument has also been advanced on behalf of the employees before us on the said issue. In the circumstances, the law laid down by this Court in T.S. Kelawala, with which we concur, will be applicable. The wages of the employees for the whole day in question i.e., December 29, 1977 are liable to be deducted."

The dictum in Management of Churakulam Tea Estate (P) Ltd. Vs. Workmen and Another, is relied upon to the following proposition:

"Negative the contentions, held that the strike was not illegal as there was no contravention of Section 23(a) inasmuch as there was no conciliation proceedings pending before a "board" (which term is defined u/s 2(c) on the date of the strike and hence is not hit by Section 241(i) of the Act. Held further that the strike was not unjustified as it was not directly connected with the demand for bonus and that evidence established that the strike was as a protest against the unreasonable attitude of management in boycotting the conference held by the Labour Minister. The union Secretary's evidence as to this aspect of the case was not controverted in his cross examination; nor was there any evidence let in by the management to show that the strike was not for the reasons given by union Secretary. Therefore, the workers are entitled to wages for that day."

12. On behalf of the management, reliance was placed upon the following case wherein the Supreme Court held that the strike is unjustified, the workers are not entitled to wages Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, is to the following effect in at p. 278 of LLJ:

"Thus the concept of lockout is essentially different from the concept of lay-off, and so where the closure of business amounts to a lockout u/s 2(1) it would be impossible to bring it within the scope of lay-off u/s 2(kkk). As observed by the Labour Appellate Tribunal in Presidency Jute Mills Company Ltd. v. Presidency Jute Mills Employees" Union 1952 I LLJ 796 (LAT) in considering the essential character of a lockout its dictionary meaning may be borne in mind. According to the dictionary meaning lockout means:

"a refusal by the employer to furnish work to the operatives except on conditions to be accepted by the latter collectively."

Stated broadly, lay-off generally occurs in a continuing business, whereas a lockout is the closure of the business. In the case of a lay-off owing to the reasons specified in Section 2(kkk) the employer is unable to give employment to one or more workmen. In the case of a lockout the employer closes the business and locks out the whole body of workmen for reasons which have no relevance to causes specified in Section 2(kkk). Thus the nature of the two concepts is entirely different and so are their consequences. In the case of a lay-off the employer may be liable to pay compensation as provided by Sections 25C, 25D and 25E of the Act; but this liability cannot be invoked in the case of a lockout. The liability of the employer in cases of lockout would depend upon whether the lockout was justified and legal or not; but whatever the liability, the provisions applicable to the payment of lay-off compensation cannot be applied to the cases of lockout. Therefore, we hold that the lockout in the present case was not a lay-off, and as such the respondents are not entitled to claim any lay-off compensation from the appellant. Incidentally we would like to add that the circumstances of this case clearly show that the lockout was fully justified. The appellant's manager had been violently attacked and the other members of the staff working in the lower division were threatened by the respondents. In such a case if the appellant locked out his workmen, no grievance can be made against

its conduct by the respondents."

The Madras High Court in *Management of India Radiators, Ltd., v. Presiding Officer, Second Labour Court, Madras* (2) *Workmen of India Radiators, Ltd.* 1998 (3) L.L.N. 411 has taken the view when there was slowing down the production by the workman deliberately to pressurise concede their demands, they are not entitled to lay-off compensation, which is to the following effect:

"If there was in fact a case of slowing down the production which made it necessary to lay-off the workmen employed any other part of the production process, even though they had not participated in the go-slow such lay-off being necessary on account of the requisite work not being available, that was certainly a circumstance justifying lay-off. The view of the Tribunal that it is not such circumstances is clearly erroneous and it is not in accordance with the law laid down by the Apex Court. The fact that slowing down of production is also a misconduct does not render it any less a justification for lay-off.

The question as to whether there was in fact a go slow of production will still have to be considered. The workmen claimed that there was no go-slow as the norm was still being maintained and it is only a production over and above the norm that was not being given, and that was only because the union wanted the management to negotiate on their charter of demands. This stand of the union discloses that the workmen were in fact giving higher level of production earlier and that as a deliberate policy, they decided to bring down the level of production. That would certainly constitute slowing down of the production. Reference in Section 25-E of the Act is inter alia to "slowing down the production". It does not refer to the norm being maintained or production falling below the norm.

"Slowing down" implies the existence of a higher level before slowing down commenced, and falling to the lower level after the slowing down was practised. The lower level of production was in this case, only by reason of the deliberate action of the workmen in not exerting themselves to the level which they were capable and maintaining the level which they had maintained consistently for a long period of time. Thus, there was a slowing down of production. The question as to whether the workmen also were the losers to some extent, by reason of the slowing down of the production is not germane for the purpose of deciding whether there was in fact slowing down of production.

The legislative intent in using the term "slowing down the production" on the part of the workmen in another part of the establishment in Section 25-E(ii) of the Industrial Disputes Act appears to be that industrial undertakings which were engaged in manufacture or production of goods and services should at all times continue to perform at the highest possible level of efficiency, and to produce the optimum level of goods and services, notwithstanding the existence of any dispute as between the workmen and the management, as such disputes were required to be resolved in accordance with the provisions of the Act which inter

alia provide for conciliation, arbitration and adjudication. Slowing down of production by the workmen deliberately with a view to coerce the management to concede their demands disentitles those laid off as a consequence of such slowing down from claiming lay-off compensation. Payment of full wages to persons so laid off from his duty though he had asked for it. That was certainly not the situation in the present case in respect of any of the employees and that is not the contention of the employees either. Hence, in cases such as the present one, the only question that has to be considered is whether, when admittedly the employees refuse to work by going on strike, the employer is entitled to deduct wages for the relevant period or not. We thought that the answer to this question was apparent enough and did not require much discussion. However, the question has assumed a different dimension in the present case because on the facts, it is contended that although the employees went on strike only for four hours and thereafter resumed their duties, the bank has deducted wages for the whole day. It is contended that in any case this was impermissible and the bank could at the most deduct only pro rata wages. Normally, this contention on the part of the workers would be valid. But in a case such as the present one, where the employees go on strike during the crucial working hours which generate work for the rest of the day, to accept this argument is in effect to negate the purpose and efficacy of the remedy, and to permit its circumvention effectively. It is true that in the present case when the employees came back to work after their four-hours strike, they were not prevented from entering the bank premises. But admittedly, their attendance after the four-hours strike was useless because there was no work to do during the rest of the hours. It is for this reason that the bank had made it clear, in advance, that if they went on strike for the four hours as threatened, they would not be entitled to the wages for the whole day and hence they need not report for work thereafter. Short of physically preventing the employees from resuming the work which it was unnecessary to do, the bank had done all in its power to warn the employees of the consequences of their action and if the employees, in spite of it, chose to enter the bank's premises where they had no work to do, and in fact did not do any, they did so of their own choice and not according to the requirement of the service or at the direction of the bank. In fact, the direction was to the contrary. Hence, the later resumption of work by the employees was not in fulfilment of the contract of service or any obligation under it. The bank was, therefore, not liable to pay either full day's salary or even the pro rata salary for the hours of work that the employees remained in the bank premises without doing any work. It is not a mere presence of the workmen at the place of work but the work that they do according to the terms of the contract which constitutes the fulfilment of the contract of employment and for which they are entitled to be paid."

Reliance was also placed upon the judgment of a single Judge of this Court reported in the case of Panyam Cements and Minerals Industries Ltd., Wire Division, Bangalore v. Deccan Wire Employees Association, Bangalore and Anr.

1998 LLR 1128 to the following effect:

"In the light of the principles enunciated by the Supreme Court in the abovesaid decisions, it could be seen that the demand for bonus as raised by the workmen of the Wire Division was not of such an urgent and serious nature as to justify the workmen to resort to strike. The matter had been admitted to conciliation. Ms. Swetha Anand submits that the workmen had withdrawn from conciliation. Even then, it would not justify the workmen going on strike. There was no reason for the workmen to withdraw from conciliation, nor was there any reason for them not to wait till conciliation officer submitted his failure report and till the State Government referred the dispute for adjudication to the Industrial Tribunal. Their going on strike, therefore, was totally unjustified, and the Tribunal erred in concluding to the contrary. In the above said decision of the Supreme Court in Syndicate Bank's case (supra), the Supreme Court referred to its observations in an earlier case thus:

Even if the strike is legal, it does not save the workers from losing the salary for the period of the strike. It only saves them from disciplinary action, since the Act impliedly recognizes the right to strike as a legitimate weapon in the hands of the workmen. However, this weapon is circumscribed by the provisions of the Act and the striking of work in contravention of the said provisions makes it illegal. The illegal strike is a misconduct which invites disciplinary action while the legal strike does not do so. However, both legal as well as illegal strikes invite deduction of wages on the principle "whoever voluntarily refrains from doing work when it is offered to him, is not entitled for payment for work he has not done". In other words, the Court upheld the dictum "no work no pay".

13. The question whether the workman who was not given employment on account of lay off is entitled to claim lay off compensation is considered by the Supreme Court in Kairbetta Estate, Kotagiri v. Rajamanickam and Ors. (supra) is to the following effect in Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others,

"Thus the concept of lockout is essentially different from the concept of lay-off, and so where the closure of business amounts to a lockout u/s 2(1) it would be impossible to bring it within the scope of lay-off u/s 2(kkk). As observed by the Labour Appellate Tribunal in Presidency Jute Mills Company Ltd. v. Presidency Jute Mills Company Employees Union (supra) in considering the essential character of lockout its dictionary meaning may be borne in mind. According to the dictionary meaning lockout means:

"a refusal by the employer to furnish work to the operatives except on conditions to be accepted by the latter collectively."

Stated broadly, lay-off generally occurs in a continuing business, whereas a lockout is the closure of the business. In the case of a lay-off owing to the reasons specified in Section 2(kkk) the employer is unable to give employment to one or more workmen. In the case of a lockout the employer closes the business

and locks out the whole body of workmen for reasons which have no relevance to causes specified in Section 2(kkk). Thus the nature of the two concepts is entirely different and so are their consequences. In the case of a lay-off the employer may be liable to pay compensation as provided by Sections 25-C, 25-D and 25-E of the Act; but this liability cannot be invoked in the case of a lockout. The liability of the employer in cases of lockout would depend upon whether the lockout was justified and legal or not; but whatever the liability, the provisions applicable to the payment of lay-off compensation cannot be applied to the cases of lockout. Therefore, we hold that the lockout in the present case was not a lay-off, and as such the respondents are not entitled to claim any lay-off compensation from the appellant. Incidentally we would like to add that the circumstances of this case clearly show that the lockout was fully justified. The appellant's manager had been violently attacked and the other members of the staff working in the lower division were threatened by the respondents. In such a case if the appellant locked out his workmen, no grievance can be made against its conduct by the respondents."

14. I have considered the submissions made by the respective counsel. The issue involved in these writ petitions are:

- 1) Whether the management was justified in declaring the lockout with effect from December 24, 1983 to February 8, 1984 in all the departments of its establishment ?.
- 2) Whether the continuation of lockout from February 9, 1984 in respect of the departments excluding Still House, Boiler House, Water Treatment Plant, Maintenance and Power House after April 16, 1984 was justified?.
- 3) Whether the workmen are justified in going on strike on December 23, 1983?.
- 4) Whether the workmen are justified in remaining absent from work with effect from February 9, 1984 though the lockout was lifted by the management in respect of the department of Still House, Boiler House, Water Treatment Plant, Maintenance and Power House departments?.

15. The First question was answered by the Tribunal against the management by holding that the lockout from December 24, 1983 to February 8, 1984 is not justified. The second question was answered holding that question does not arise in view of the fact that the workmen refused to work and they are not entitled to wages for the period. So far as the third point is concerned, the answer is that the workmen were not justified in going on strike on December 23, 1983 and the fourth point again answered against the workmen holding that remaining absent from their work with effect from February 9, 1984 to April 16, 1984 instead of February 16, 1984 as agreed to by the parties, they are not entitled to wages for that period.

16. Evidence were let in by the parties before the Tribunal and on behalf of the workmen two witnesses were examined and 10 documents were marked as

against the management examined 3 witnesses and marked 59 documents. The principles of law involved in the above decisions culled out supra is that either lockout or strike must be both legal and justifiable. So far as the counsel for the workmen is concerned, Mr. K.S. Subramanya frankly submitted that the lockout is illegal but his contention is that lockout is not justified. So the area of dispute becomes restricted to only about the justification of the lockout. Sections 23 and 24 of the Industrial Disputes Act deals with the lockout and strike. Section 23 contemplates that no workman who is employed in any Industrial Establishment shall go on strike in breach of contract and employer of any such workman shall declare a lock-out in particular, during any period in which a settlement or award is in operation in respect of any of the matter covered by the settlement or award. It is also mentioned in Section 24(3) 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." As held by the Supreme Court in *Crompton Greaves Limited v. Their Workmen* (supra) referred to above, wherein it is laid down that whether the violence was used or not is always a question of fact and whether the particular act was justified or not has to be judged in the light of the facts and circumstances of each case.

17. In the present case, it is seen that a long term settlement was arrived at between the Union and the Management on October 27, 1980 for the period from November 22, 1980 to October 31, 1984 and the said settlement was in operation till October 31, 1984 and binding on the workmen and that it is seen that the workmen resorted to various coercive activities. In December 1983, the workmen resorted to stay in strike and started shouting slogans against the company. It is also alleged that the office bearers and the executive committee members of the employees' Union entered into the administrative office and instructed the administrative staff not to work. On December 22, 1983 at about 1 p.m., the workmen took out a procession around the administrative office inside the factory premises shouting slogans. The correspondence between the management and workmen prior to December 1983 i.e., between October and December revealed that there was a discussion on the demand of payment of Dearness Allowance (D.A.) and it was pointed out by the management under Ex.M-5 that the present demand for D.A. can be taken up for discussion only after the expiry of the then existing settlement and agreement. It is also pointed out that no fresh financial burden on the management should be put on their shoulder during the currency of the settlement.

18. The contention of the workmen is that the settlement did not provide for any scheme for neutralization for rise in prices and the real wages of workmen eroded year by year and in 1983 erosion was unbearable. It is seen in paragraph-10 of the settlement arrived at between the parties that the settlement remained in force for a period of four years from November 1, 1980 to October 31, 1984 and in response to the Union demand to termination of the existing settlement prematurely, the management made it clear that they have no hesitation in discussing the demand after the expiry of the present settlement

and entering into a new settlement thereafter. In that effect, the management addressed a letter to the President of the union with a copy to the Labour Commissioner (Ex. M-7) wherein it is stated that the workmen have deliberately resorted to go-slow in production resulting in financial loss to the company. In fact there was a notice on notice board on November 17, 1983 (Ex.M-8), November 18, 1983 (Ex.M-9), November 19, 1983 (Ex.M-10), November 21, 1983 (Ex.M-11) indicating the attitude of the workmen who are deliberately resorting to go slow tactics in production. Even according to the dates mentioned in Ex.M-12, a notice was published in the board showing how the "go slow" has been adopted by the workmen resulting in less production. It was pointed out to the Union under Ex.M-13 that go slow production is a very heinous offence and it is worse than a strike. Even after such notice, it is indicated by the workmen as could be found from Ex.M-14 series i.e., Ex.M (a) to Ex.M(f) that go slow was still continuing. Though under Ex.M-17 the President of the Union denied and claimed that the workers are giving normal production, they cannot insist upon consideration demand for payment of more wages by giving a relief of D. A. But they have not chosen to deny the figures and had given a contra figure as to how the claim of the management regarding the less production is not correct. In fact, the notice Ex.M-18 was given on December 15, 1983 which is to the following effect:

It was observed yesterday i.e. on December 14, 1983, at 1 P.m., workmen left their work spot, assembled in front of the Administrative Office shouting slogans and also abusing senior officers of the Company in a vulgar language, violently.

Shouting slogans and abusing senior officers of the Company in a vulgar language amounts to committing serious acts of misconduct.

Workmen are hereby instructed in their own interest to refrain from indecent behaviour. Management is seriously concerned about the situation and will be compelled to take suitable action against the workmen responsible for yesterday's incident.

The above notice indicates the attitude of the workmen resorted into violence. It was also made clear under letter dated December 15, 1983 that the Union go slow tactics has been more vigorously carried on resulting in production coming down to rock-bottom level. A notice was published on the notice board on December 16, 1983 stating that on December 15, 1983 at 1 p.m. the workmen left their work spot, came in procession to the Administrative office located inside the factory premises and went around the premises several times shouting slogans and also abusing officers of the Company in a vulgar language violently and a warning was given. The notice continued as could be seen on December 19, 1983, December 20, 1983 and it has become regular day to day affair for the workmen to go around the office leaving the work spot in a procession on December 15, 1983, December 17, 1983, December 19, 1983, December 20, 1983 and December 21, 1983. It was also alleged by the management by letter dated December 26, 1983 that one B.K. Narashimamurthy was assaulted by a

few workmen and all the workmen joined and physically assaulted, tore the uniform and pushed the police constable outside the gate and in this stampede, Mr. K.M. Narayanaswamy was hurt and this was good enough to send the workmen for treatment to E.S.I. hospital in a company's car for treatment. A copy of such notice was sent to the Labour Commissioner as well. In fact further notice put on December 23, 1983 indicating that on December 22, 1983, workers, took out procession shouting slogans and using vulgar and abusive language against the officers of the company. In fact, the names of the workers is mentioned in Ex.M-28 who tried their level best to make their forceful entry into the main office and against those five workmen F.I.R. was also filed. In fact, it was very specifically mentioned therein that Mr. B.K. Narasimha Murthy, Assistant Security Officer was pushed and manhandled by the workmen and the situation was very much chaotic and went out of control. Mr. Lingappa PC. 571, came to the rescue of Mr. B.K. Narashima Murthy. The above named five workmen namely, Hanumanthappa, P.S. Nanjundaiah, K.H. Puttaswamy, K.M. Narayanaswamy and T. Ramaiah manhandled him and the said police constable was also pushed out of the main gate by workmen. Again a notice was put up on December 23, 1983. Ultimately, that notice which was filed as Ex.M-29 only made it clear that it amounts to stay in strike and this is what the notice reads:

"In continuation of go-slow tactics, the workmen today have resorted to stay-in strike. The workmen in all the departments started shouting slogans and also used abusive and vulgar language against the officers of the company.

The management regrets to note that the workmen have not commenced work at all. Some of the office bearers/executive committee members have entered the Administrative office unauthorisedly in the morning at about 9.00 am. and instructed the Administrative staff not to work. Thereby, the work of the Company has come to stand-still. Some of the office bearers/executive committee members entered the Administrative office again at about 10-20 a.m., unauthorisedly to ensure and also to further instruct the staff members not to work.

The present act of workmen amounts to stay-in strike which is unjustified and the workmen are not eligible for wages/salary on the principle of "No work - No wage" during the period of "stay-in strike".

It is hoped that good counsel will prevail upon the workmen and normal production and work will be resumed forthwith."

19. Then only, on December 24, 1983, lockout notice was issued. It is also to be noted that there was a strike on December 23, 1983 as mentioned in Ex.M-53. It is also mentioned it as a token protest against the attempt to victimize the General Secretary and other leaders of the union against the management and injury by Narasimha Murthy to Narayanaswamy, and according to them, it was peaceful and it was claimed by the workmen that the token strike was spontaneous and complete. It is rather surprising to note that the Tribunal has

rejected the contention of the "go slow" relying upon the evidence of M.W. 1 in the cross examination and such rejection is prima facie illegal. When the voluminous documents are available and those documents are not in dispute, reliance placed on the oral evidence is not proper nor legal and such a finding is prima facie perverse. Having found that the instances earlier to December 22, 1983 is not in dispute and that there may be such an earlier incident that has created apprehension in the mind of the management to take extreme steps of lockout, the Tribunal found that without some police complaint and non examination of any of the police officers to satisfy the out of control situation, the extreme steps of lockout is not justifiable. Such a reasoning again is a perverse approach. The Tribunal found that there has been series of notices which were not disputed and there was a series of warnings put up by the management to the workmen not to go on procession by shouting slogans using abusing language against the officers of the company. These documents are not disputed as the documents given continuously and the notices were affixed in notice board day in day. This cannot be taken as a mere imagination or writing story and these incidents did happen and there is no denial though there is an evasive approach made by the workmen. The fact that prior to declaring lockout, continuously for more than eight days, they made one to fear or create apprehension in the mind of management to take such extreme steps of lockout. The police complaints are proved by filing F.I.R. So the fact remains that there was a complaint that has been made. Merely on the ground that the police officer was not examined to satisfy that the things went out of control is not understandable. If the attitude of the workmen vis-a-vis management that is evidenced by the continuous unauthorized entry into the Administrative Office, going in procession around the administrative office, shouting slogans with abusing language against the officers of the company and at that time there was no police officer. Only when the things went out of control, police help was asked. So the question of examining any police officer and the police officer coming and deposing before the Tribunal about the situation going out of control cannot be expected and it does not arise at all.

20. The Apex Court in the case of Churakulam Tea Estate (Private) Ltd. v. Its Workmen and Anr. case (supra) has observed:

"when there is a raise in index and such raise was more recent, even so, the demands were not of such an urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through Industrial Tribunal was resorted to. In fact, the Madras High Court also observed in the cases referred to supra that slowing down of production by workman deliberately to pressurise and with view to coerce the management to consider their demands itself disentitles the employees laid off to claim lay off compensation. In fact the Supreme Court in Syndicate Bank and Another case mentioned above, has referred to the illegality of strike or lockout and has laid down the following principles in 1994 II LLJ 836 at 849, 850:

"9. The strike or lockout is not to be resorted to because the concerned party has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of the rule of "might is right". Its consequences are lawlessness, anarchy and chaos in the economic activity which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be heard to justify. This will be particularly so when it is resorted to by the section of the society which can well await the resolution of the dispute by the machinery provided for the same. The strike or lockout, as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the Act places additional restrictions on strikes and lockouts in public utility services.

With the emergence of the organised labour, particularly in public undertakings and public utility services, the old balance of economic power between the management and the workmen has undergone a qualitative change in such undertakings. Today, the organised labour in these institutions has acquired even the power of holding the society at large to ransom, by withholding labour and thereby compelling the managements to give in on their demands whether reasonable or unreasonable. What is forgotten many times, is that as against the employment and the service conditions available to the organised labour in this undertakings, there are millions who are either unemployed, under-employed or employed on less than statutorily minimum remuneration. The employment that workmen get and the profits that the employers earn are both generated by the utilisation of the resources of the society in one form or the other whether it is land, water, electricity or money which flows either as share capital, loans from financial institutions or subsidies and exemptions from the Governments. The resources are to be used for the well-being of all by generating more employment and production and ensuring equitable distribution. They are not meant to be used for providing employment, better service conditions and profits only for some. In a case like this both the capital and the labour are to act as the trustees of the said resources on behalf of the society and use them as such. They are not to be wasted or frittered away by strikes and lockouts. Every dispute between the employer and the employee has, therefore, to take into consideration the third dimension, viz., the interests of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer or the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect."

21. So in the light of the principles laid down by the Apex Court, it is got to be

held that the finding of the Tribunal that the lockout between December 24, 1983 to February 8, 1984 is not justified has to be set aside. Though normally this Court is not expected to interfere with the finding rendered by the Tribunal, once the finding is found to be not based on evidence, nor could be inferred from the documents produced but it is based only on conjectures and surmises, then the finding has to be set aside. In view of the above, the writ petition filed by the management (W.P.No. 7917/1996) has to be allowed as it is concerned only with the justification of the lockout and grant of wages for the said period.

22. Then, we come to the other two points raised by the workmen factor in W.P.No. 25545/1996 regarding (1) declaration that the strike on December 23, 1983 and remaining absent from work from February 9, 1984 to April 16, 1984 is unjustified and (2) the continuation of the wages from February 9, 1984 to April 16, 1984 is also not justified.

23. So far as the strike on December 23, 1983 is concerned, the Tribunal came to the conclusion and rightly too that the strike on December 23, 1983 is not in dispute. Even according to the evidence of W. W. 1, it was to withdraw the charge sheet filed against nine persons including him. The purpose of the strike is to withdraw the charge sheet. Certainly an offence is said to have been committed and the charge sheet was filed against those offenders and it is not proper for the workers to go on strike compelling the management to withdraw the charge sheet filed against them by the police. It may even amount to prevention of prosecution of lawful cause which according to the management is lawful. Once the police filed charge sheet for the offence committed by a person and the police law is set into motion, it is for the authorities concerned to decide about the validity or invalidity of the charges. Though I do not want to express any opinion on the prima facie case made out by the management against workers as could be evidenced by the F.I.R., it was also seen later the charges were withdrawn subsequently on a settlement. Such a course on the part of the management cannot be construed as a weakness and the strike made on December 23, 1983 can certainly be not justified. This finding rendered by the Tribunal is not liable to be interfered with and the same is therefore confirmed. The last question is whether the absence of the workmen from duty from February 9, 1984 to April 16, 1984 is justifiable when the lockout was justified. The Tribunal also found that in Ex.M-36, the only complaint of the Union was that it was a divide tactics. It is not the case of the Union that the management did not properly inform. In fact the management did inform that soon after the above workmen and staff members reported for work and made the plant ready for production, the management will notify the date of lifting of the lock-out in respect of the other workmen. This factual position is not disputed. It is quite understandable to note that only when the plant and machinery which were affected by the lockout has to be made available for the workmen to carry on their job and without the same no work can be embarked upon. Therefore, once the management made it clear that once the workmen in those departments can keep the plant ready for work, then only the lockout in respect of the other

workmen could be lifted, cannot be said to be wrong. This being a clear question of fact inferred from the documents and the evidence available on record, such a finding is not liable to be interfered with by this Court at all. In this view, finding no merit, I hold that the writ petition filed by the workmen namely W.P.No. 25545/1996 is liable to be dismissed.

24. In the result, Writ Petition No. 7917/1996 is allowed and the Writ Petition No. 25545/1996 is dismissed.