

(2004) 01 KAR CK 0054

In the Karnataka High Court

Case No : Writ Appeal No's. 6347 of 2000, 1005 and 1006 of 2001

The Karnataka State Road Transport Corporation APPELLANT
Vs

Karnataka State Road Transport Corporation Staff and RESPONDENT
Workers" Federation

Date of Decision : 29-01-2004

Acts Referred:

Constitution of India, 1950 — Article 141
Industrial Disputes Act, 1947 — Section 22, 24, 26
Karnataka State Road Transport Corporation Servants (Conduct and Discipline),
Regulations, 1971 — Regulation 18, 18A
Road Transport Corporations Act, 1950 — Section 14, 45

Citation : (2004) ILR (Kar) 2497 : (2004) 3 KarLJ 238 : (2004) 2 KCCR 170
SN : (2004) 2 LLJ 891

Hon'ble Judges : P. Vishwanatha Shetty, J;Ajit J. Gunjal, J

Bench : Division Bench

Advocate : K. Lakshminarayana Rao and H.R. Renuka, in W.A. No. 6347 of 2000, M.C. Narasimhan, in W.A. Nos. 1005 and 1006 of 2001, for the Appellant;
K. Lakshminarayana Rao and H.R. Renuka in W.A. No. 1005 and 1006 of 2001,
M.C. Narasimhan in W.A. No. 6347 of 2000, for the Respondent

Judgement

P. Vishwanatha Shetty, J.—Since both the appeals are directed against the common order dated 11th September, 2000 made in Writ Petition Nos. 14636 and 15701 of 1998 by the learned Single Judge, these appeals were heard together and disposed of by this common judgment.

2. The appellant in Writ Appeal No. 6347 of 2000 is the Karnataka State Road Transport Corporation (hereinafter referred to as "the Corporation"). The said writ appeal is directed against the order made in Writ Petition No. 15701 of 1998. The 1st respondent in the said writ appeal is the Karnataka State Road Transport Corporation Staff and Workers" Federation represented by its General Secretary (hereinafter referred to as "the Federation"). The Federation is the appellant in Writ Appeal Nos. 1005 and 1006 of 2001 and the Corporation is the 1st respondent. The said appeals are directed against the order made in Writ Petition

No. 14636 of 1998.

3. The facts in brief are as hereunder:

The workmen employed in the B.T.S. Division of the Corporation went on strike on 11th March, 1992 apprehending that the State Government is likely to privatise the B.T.S. Division of the Corporation and also that the B.T.S. Division is likely to be separated from the Corporation. All the workmen of the Corporation again went on strike on 23rd, 24th and 25th September, 1992, on the ground that one of the Trade Union leaders of Hassan Division was assaulted by the public without any provocation. Again on 28th July, 1993 and 9th September, 1993, the workmen of the Corporation went on strike in support of their demand that the Government of Karnataka should implement the MOU sent by the representatives of the Federation and also the representatives of the K.S.R.T.C. Aggrieved by the action of the workmen who had resorted to strike on the dates referred to above, the Corporation issued a show-cause notice dated 27th March, 1992 to the workmen proposing to deduct eight days wages for each day's strike in addition to the deduction of wages on the dates of their absence. Pursuant to the said show-cause notice, the Federation filed its objection inter alia contending that it is not permissible for the Corporation to deduct eight days wages for the absence of the workmen from duty on the dates of the strike and also justified the action of the workmen going on strike. The conciliation proceedings initiated having failed, the State Government by means of its notification dated 14th December, 1993 referred the dispute between the parties to the Industrial Tribunal. The points referred are:

4. In the course of the proceedings before the Industrial Tribunal on behalf of the Corporation one Sri Auradkar who is the Labour Officer of the Corporation was examined as M.W. 1 and documents M. 1 to M. 24 were marked. On behalf of the Federation, two office-bearers of the Union were examined as W.W. 1 and W.W. 2. Four documents were marked on their behalf as W. 1 to W. 4. The Industrial Tribunal on consideration of the questions referred to it for adjudication and also on the basis of the materials on record passed the award dated 25th November, 1997. The Tribunal relying upon the decision of the Supreme Court in the case of Bank of India Vs. T.S. Kelawala and Others, , took the view that it is permissible to apply Section 9 of the Payment of Wages Act (hereinafter referred to as "the Wages Act") and deduct additional wages in addition to the deduction of wages for the period of strike. However, the Tribunal took the view that the decision taken by the Corporation to deduct eight days wages for each day of strike is on a higher side and in the light of the said conclusion reduced the proposed deduction to four days wages for each day's strike. Aggrieved by the said award, the Federation filed Writ Petition No. 14636 of 1998. The Corporation filed Writ Petition No. 15701 of 1998 challenging the correctness of the award to the extent the Tribunal has modified the punishment proposed for deduction of eight days wages for each day's absence to four days wages. The learned Single Judge in the order impugned in these appeals dismissed both the writ petitions. As

noticed by us earlier, aggrieved by the said order, these writ appeals are filed.

5. Since we find it is convenient to deal with the appeals filed by the Federation for the disposal of these appeals, we propose to consider the contentions urged by Sri M.C. Narasimhan, learned Counsel appearing for the Federation in both the appeals first.

6. Sri Narasimhan, challenging the correctness of the award passed by the Tribunal as well as the order passed by the learned Single Judge made several submissions.

Firstly, he submitted that the impugned award passed by the Tribunal and also the order passed by the learned Single Judge are liable to be set aside on the short ground that the award passed by the Tribunal is beyond the points referred to the Tribunal for adjudication. Elaborating this submission, the learned Counsel pointed out that while the points referred to the Tribunal relates to the question as to whether the Corporation was justified in proposing to deduct eight days wages for each day's absence u/s 9 of the Wages Act on the dates when the workmen struck work, the Tribunal has upheld the action of the Corporation on the ground that it is permissible for the Corporation to take guidance from the provisions of Section 9 of the Wages Act; and according to him the said conclusion reached by the Tribunal was beyond the points referred to the Tribunal. In support of this contention he relied upon the Division Bench decision of this Court in the case of *Workmen, Mysore Paper Mills Limited v. The Management, Mysore Paper Mills Limited* and Anr. 1970 (1) MLJ 287 . Secondly, he submitted that the learned Single Judge as well as the Tribunal have seriously erred in law in proceeding on the basis that the judgment of the Supreme Court in the case of *Kelawala, supra*, empowers the Management (i.e., Corporation) to deduct wages upto eight days for each day's absence as provided under proviso given to Sub-section (2) of Section 9 of the Wages Act. It is his submission that the question whether it is permissible to deduct wages upto eight days or for a shorter period for each day's absence in addition to the deduction of wages for each day's absence, was not the question at issue in the said decision; and as a matter of fact the said question having not been considered and decided by the Supreme Court, any observation made by the Supreme Court in the said decision cannot be treated as a binding precedent required to be followed by this Court. In support of his submission, he relied upon the decision of the Supreme Court in the case of *Post-graduate Institute of Medical Education and Research, Chandigarh v. Raj Kumar* AIR 2001 SC 479 : (2001)2 SCC 54 : 2001 SCC 365. His third submission is that the deduction from wages has to be made within ten days after the expiry of the month and in the instant case the same having not been made, it was not permissible for the Corporation to propose to deduct the wages as has been done. In this connection, he referred to us Sections 3 and 4 of the Wages Act and also relied upon the decision of the Orissa High Court in the case of *Talcher Coal Mines Employees' Union v. Talcher Colliery and Ors* 1990 Lab. I.C. 1600 (Ori.) : ILR 1991 51. According to him under the scheme of the

Act, permissible deductions are relatable only to the wage period referred to in Section 3 of the Act and therefore, when the wage becomes due for the wage period, the deduction also can be only for the same period and therefore, it was not permissible for the Corporation having failed to exercise its right to deduct the wages within the wage period, to propose to deduct wages out of the wages payable to the workmen for subsequent months of the strike period. Fourthly, Sri Narasimhan submitted that since in the pleadings before the Tribunal it was not claimed on behalf of the Corporation that the provisions of the Wages Act were made applicable while imposing the penalty in question, the penalty imposed is required to be quashed on the ground that it is not permissible for the Tribunal to take the view that the penalty in question was imposed by applying the proviso given to Sub-section (2) of Section 9 of the Wages Act. It is his fifth submission that even in cases where a strike resorted to by the workmen is held to be illegal for non-compliance of the procedures prescribed, still it is possible to take the view that the workmen had a reasonable cause to resort to strike and in those circumstances it is not permissible to deduct the wages. Elaborating this submission, he submitted that Sections 22 and 24 of the Industrial Disputes Act, 1947 thereafter referred to as "the ID. Act") if properly understood recognises the right of the workman to resort to strike; and just as the management of an industrial undertaking has a right to declare lockouts or resort to lay-off, the workmen also with a view to bargain with the management have a right to resort to strike and therefore, even if it is held that the strike resorted to is illegal, the Tribunal as well as the learned Single Judge still ought to have examined the question in the light of the explanations offered by the workmen whether they had reasonable cause for absenting themselves from work or resorting to strike. He also pointed out that the finding recorded by the Tribunal and the learned Single Judge that the strike resorted to by the workmen is illegal is erroneous in law. Sixthly, it is submitted by the learned Counsel that the proviso given to Sub-section (2) of Section 9 of the Act is liable to be struck down on the ground that it is highly unreasonable, arbitrary and discriminatory in nature and violative of the right to equality guaranteed under Article 14 of the Constitution of India. The seventh submission of Sri Narasimhan that the provisions of Sections 22 to 24 of the ID. Act have impliedly repealed the proviso given to subsection (2) of Section 9 of the Wages Act, and therefore, it is not permissible either to rely upon the said provision or take guidance from the said provision to deduct wages. According to the learned Counsel, since the ID, Act is a later legislation which covers the entire field relating to industrial rights and obligations and the disputes arising between the employer and the employees; and the provisions contained in Sections 22 to 24 deals with strikes, the provisions contained in Section 9 of the Wages Act for deduction of the wages for absence from duty must be held to have been impliedly overruled, It is his submission that the entire approach made by the learned Single Judge on this question is erroneous in law. In support of this submission, he relied upon the decisions of the Supreme Court in the case of State of Orissa Vs. M.A. Tulloch and Co., ; in the case of Commissioner of Income Tax, Bombay City-1 Vs. Godavari Sugar Mills

Ltd., ; in the case of Yogender Pal Singh and others Vs. Union of India others, and in the case of Ratan Lal Adukia and Another Vs. Union of India, . Finally, he submitted that the impugned award is also liable to be struck down on the ground that the quantum of punishment imposed permitting deduction of four days wages for each day's absence is highly arbitrary, unreasonable and unjust. According to him, in the facts and circumstances of the case, the reasonable penalty could be, only deduction of one day's wage for each day's strike/absence, even if it is to be held that such a penalty could be imposed.

7. However, Sri Lakshminarayana Rao, learned Senior Counsel appearing along with Smt. H.R. Renuka while strongly supporting the action of the Corporation that the Corporation was entitled to deduct eight days' wages for each day's absence on account of the strike resorted to by the workmen, firstly, submitted that the provisions of the Wages Act would apply. Secondly, he submitted that even if the provisions of the Wages Act has no application, the principle enunciated by the Supreme Court in the case of T.S. Kelawala, supra, would fully apply and in that background if the Corporation has decided to deduct eight days wages for each day's absence; and the Tribunal having found that the strike was illegal, it was not permissible for the Tribunal to modify the decision of the Corporation proposing to deduct eight days wages for each day's strike and to pass an award permitting the Corporation deduction of only four days wages for each day's absence. Elaborating this submission, learned Counsel pointed out that the transport industry being a public utility service and the workmen having resorted to illegal strike paralysing the entire administration causing serious public injury and inconvenience, it was not permissible for the Tribunal to take a sympathetic view of the matter and modify the decision of the Corporation so far as the quantum of penalty imposed is concerned. It is his submission, that since it cannot be disputed that the strike resorted to by the workmen was illegal, it must be held that the action of the workmen in absenting themselves from duty was a concerted action and they have done it without reasonable cause. Therefore, he submitted that the order passed by the Tribunal as well as the learned Single Judge is required to be modified insofar as it relates to reduction of the penalty proposed by the Corporation and in its place an order is required to be made affirming the decision of the Corporation to deduct eight days wages for each day's illegal strike. He also pointed out that since in the notice issued to the Federation, it was specifically stated by the Corporation that the provisions underlying the Wages Act was taken into account to deduct the wages for each day's absence of the workmen, the contention of Sri Narasimhan that there is no pleading on that behalf is not correct. Sri Rao further pointed out that the conclusion reached by the learned Single Judge that the provisions of the ID. Act have not impliedly repealed the provisions of Section 9 of the Wages Act is unexceptionable and not liable to be interfered with by this Court. In support of his submissions, he relied upon the decisions of the Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, , in the case of Management of Borpukhuri Tea Estate Vs. The Presiding Officer, Industrial

Tribunal, Assam and Another, , in the case of India General Navigation and Railway Co. Ltd. and Another Vs. Their Workmen, , in the case of Kameshwar Prasad and Others Vs. The State of Bihar and Another, , and in the case of Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Another, . He also referred to the decision of the Patna High Court in the case of Minimax, Ltd. Vs. Its workmen and Another, , Madras High Court in the case of Madras Labour Union, Madras v. Binny Limited (B and C Mills) (represented by its Mill Manager) Madras 1991 LLR 264 and Orissa High Court in the case of Talcher Coal Mines Employees' Union, supra.

8. Sri Vishwanath Shendge, learned Additional Central Government Standing Counsel while supporting the submission of Sri Lakshminarayana Rao also pointed out that there is no substance in the grievance made by the learned Counsel for the Federation that Proviso given to Sub-section (2) of Section 9 of the Wages Act is required to be struck down on the ground that it is either arbitrary or violative of the right guaranteed to the workman under Article 14 of the Constitution of India. In support of this submission, he relied upon the decision of the Supreme Court in the case of H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc., .

9. In the light of the several submissions made by the learned Counsels appearing for the parties, the only question that would arise for consideration in these appeals is as to whether the order impugned passed by the learned Single Judge is required to be interfered with by us in these appeals?

10. Now, we will proceed to consider each one of the contentions urged by Sri Narasimhan. So far as the first contention of Sri Narasimhan is concerned, it is true, as contended by Sri Narasimhan that the Tribunal cannot go beyond the points referred to it. Section 10(4) of the ID. Act provides that the Labour Court/ Tribunal should confine its adjudication to the points of dispute referred to it by the Government and matters incidental thereto. In this connection, it is useful to refer to the observation made by this Court relied upon by Sri Narasimhan in the case of Workmen, Mysore Paper Mills Limited, supra. At page 291 of the judgment, this Court has observed as follows:

"He invited our attention to several decisions in support of the proposition that in construing the terms of reference and in determining the scope and nature of points referred to the Industrial Tribunal, the Industrial Tribunal has to look to the order of reference and it is only the subject-matter of reference with which the Industrial Tribunal can deal. This view is supported by the decision of the Supreme Court in Calcutta Electric Supply Corporation Limited v. Calcutta Electric Supply Workers' Union and Ors. AIR 1959 SC 1191 : (1959) 16 FJR 182. He also invited our attention to the decision of the Supreme Court in Delhi Cloth and General Mills Company Limited's. After setting out the provisions of Section 10(4), which is as follows:

"Where in an order referring an industrial dispute to a Labour Court, Tribunal or

national Tribunal under this Section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the national Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto".

The Supreme Court has observed as hereunder in Delhi Cloth and General Mills Limited's case:

"From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto".

The Supreme Court takes the view that the parties cannot be allowed to challenge the very basis of the issue set forth in the order of reference. In the present case, from the wordings of the reference, it is clear that the seven foremen referred to have been confirmed in different grades and different rates of salary and that one is discriminated against the other. The entire reference is confined to the discrimination inter se amongst the seven workmen referred to therein. The discrimination of these workmen on the one hand and the other workmen who are not named in the reference cannot be taken as being incidental to the reference" ".

However, the question that would arise for consideration is as to whether in the impugned award, the Tribunal has gone beyond the order of reference as contended by Sri Narasimhan. From the points referred to by the Government to the Tribunal it is clear that the Tribunal was required to decide the question as to whether the Corporation was justified in deducting eight days' wages u/s 9 of the Wages Act for each day's absence by the workmen in addition to the deduction of wages for the period of absence. The substance of the reference, it appears to our mind, is whether the Corporation was entitled to deduct the wages on the dates on which the employees struck work either u/s 9 of the Wages Act or by taking guidance from the said section? No doubt, since it is not in dispute that the employees of the Corporation are drawing more than Rs. 1,600/- p.m. the provisions of the Act has no application. However, the Tribunal relying upon the judgment of the Supreme Court in the case of Kelawala, supra, has taken the view that though Section 9 of the Act has no application, applying the principle underlying Section 9 of the Wages Act, the Corporation could deduct the wages as has been done by the Corporation for each day's absence from duty on account of the strike resorted to by the workmen. Therefore, the substance of the reference being the right of the Corporation to deduct wages for each day's absence from duty, the reason given to justify the action of the Corporation, in our view, cannot be taken as a ground to come to the conclusion that the award passed by the Tribunal is beyond the points of reference.

Therefore, as noticed by us earlier, the points of reference being the right of the Corporation to deduct wages payable to the employees for their absence from duty, the source of power referred to by the Tribunal to make such a decision cannot be said as one beyond the points of reference. The discussion made and the reason assigned by the Tribunal to take the view that the Corporation was entitled to, deduct wages for the absence of the employees from duty is an integral part of the power conferred on the Tribunal to answer the questions referred to it and it is incidental to the question referred. Therefore, we are unable to accede to the first submission of Sri Narasimhan that the award passed by the Tribunal is one beyond the points referred to it.

11. So far as the second contention urged by Sri Narasimhan that the Tribunal as well as the learned Single Judge have seriously erred in law in proceeding on the basis that the decision of the Supreme Court in the case of Kelawala, supra, authorises the management to deduct wages upto eight days for each day's absence in addition to the deduction of wages for the period of absence by applying the principle underlying Section 9 of the Wages Act is concerned, we find considerable force in this submission and we are of the view that the Tribunal as well as the learned Single Judge have misunderstood the principle laid down by the Supreme Court in the case of Kelawala, supra, to come to the conclusion that it is permissible for the Corporation to deduct wages upto eight days for each day's absence of the employees in addition to the deduction of wages for the period of their absence. We have carefully gone through the judgment of the Supreme Court in the case of Kelawala, supra. The facts of the case set out in Civil Appeal No. 2581 of 1986 which is referred to in the course of the judgment by the Supreme Court indicates that during the pendency of the claim made by the All India Bank Employees' Association for revision of pay-scale, the All India Bank Employees' Association had given a call for a country-wide strike by bank employees on 29th December, 1977 and the Bank of India which had come to know about the proposed strike, issued a Circular on 27th December, 1977 to all its Managers and agents to deduct wages of the employees who would participate in the strike for the days they go on strike. The Bank Employees' Association gave a call for four hours strike on 29th December, 1977 and under those circumstances, the Bank on 27th December, 1977 issued an Administrative Circular warning the employees that they would be committing a breach of contract of their service if they participate in the strike and that they would not be entitled to draw salary for the full day if they do so, and consequently the employees need not report for work for the rest of the working hours on that day. However, notwithstanding the said Circular issued by the Bank, the employers went on four hours strike from the beginning of the working hours on 29th December, 1977. Further, the employees resumed work on that day after the strike hours. Subsequently, the Bank deducted the full day's salary of those employees who had participated in the strike. Aggrieved by the said decision of the Bank, the Employees' Association filed a writ petition before the High Court. The writ petition came to be allowed by the learned Single Judge and

the said decision was affirmed by the Division Bench of the High Court. However, the Supreme Court reversed the judgment of the High Court and took the view that in view of the provisions contained in proviso given to Sub-section (2) of Section 9 of the Wages Act, though the provisions of the Act have no application, the principle enunciated in the said provision may be made applicable when misconduct is not disputed and the employees resorted to a mass scale strike. As noticed by us earlier, while Sri Narasimhan would strongly urge for our acceptance that the decision cannot be taken as a binding precedent to take the view that the management has the power to deduct wages upto a period of eight days for each day's absence in addition to deduction of wages for the period of absence, Sri Rao, learned Counsel appearing for the Corporation would strongly counter the said submission. While we find considerable force in the submission of Sri Narasimhan, we are unable to accept the contention of Sri Rao. In our view, as rightly pointed out by Sri Narasimhan, the only question that came up for consideration before the Supreme Court in the said decision was when the bank employees absented themselves from duty for four hours pursuant to the strike call issued by the association; and when they had resumed work after the expiry of the period of strike, was the management entitled to deduct the wages for the entire day? The facts of the case referred to by us above indicates that the bank had issued an administrative circular warning the employees that they would be committing breach of their contract of service if they participate in the strike and that they would not be entitled to draw the salary for the full day and therefore, they need not report for duty after the strike period for the rest of the working hours on that day. At paragraph 4 of the judgment, the Supreme Court has specifically stated that the only question that had arisen for consideration before it was that in the absence of terms of a contract of employment or a provision of the service rules and regulations, whether an employer was entitled to deduct wages for the period when the employees refuse to work although work is offered to them. It is useful to refer to the observation made at paragraph 4 of the judgment, wherein it is observed thus:

"4. The principal question involved in the case, according to us, is, notwithstanding the absence of a term in the contract of employment or of a provision in the service rules or regulations, whether an employer is entitled to deduct wages for the period that the employees refuse to work although the work is offered to them. The deliberate refusal to work may be the result of various actions on their part such as a sit-in or stay-in strike at the workplace or a strike whether legal or illegal, or a go-slow tactics. The deliberate refusal to work further may be legal or illegal as when the employees go on a legal or illegal strike. The legality of strike does not always exempt the employees from the deduction of their salaries for the period of strike. It only saves them from a disciplinary action since a legal strike is recognised as a legitimate weapon in the hands of the workers to redress their grievances. It appears to us that this confusion between the strike as a legitimate weapon in the hands of the workmen and the liability of deduction of wages incurred on account of it,

whether the strike is legal or illegal, has been responsible for the approach the High Court has taken in the matter".

Again at paragraph 5 of the judgment the Supreme Court has observed thus:

"5. . . . However, when misconduct is not disputed but is, on the other hand, admitted and is resorted to on a mass scale such as when the employees go on strike, legal or illegal, there is no need to hold an inquiry. To insist on an inquiry even in such cases is to pervert the very object of the inquiry, In a mass action such as a strike it is not possible to hold an inquiry against every employee nor is it necessary to do so unless, of course, an employee contends that although he did not want to go on strike and wanted to resume his duty, he was prevented from doing so by the other employees or that the employer did not give him proper assistance to resume 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".

Again at paragraph 22 of the judgment after referring to a number of decisions it has taken the view that whether the deduction from wages will be pro rata for the period of absence only or will be for a longer period will depend upon the

facts of each case, such as whether there was any work to be done in the said period; whether the work was in fact done and whether it was accepted and acquiesced in, etc. Again at paragraph 23, the Supreme Court has further observed that it is not enough the employees attend the place of work; they must put in the work allotted to them and it is for the work and not for their mere attendance that the wages/salary are paid. Further, it is also observed that when there is a dispute as to whether the employees attended the place of work or put in the allotted work or not; and if they have not for any reason thereof etc., the dispute has to be investigated by holding an enquiry into the matter and in such a case no deduction from the wages can be made without establishing the omission and/or commission on the part of the employees concerned. It is useful to refer to the observation made at paragraphs 22 and 23 of the judgment:

"22. The principles which emerge from the aforesaid authorities may now be stated. Where the contract, Standing Orders or the service rules/regulations are silent on the subject, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed, Whether the deduction from wages will be pro rata for the period of absence only or will be for a longer period will depend upon the facts of each case, such as whether there was any work to be done in the said period, whether the work was in fact done and whether it was accepted and acquiesced in, etc.

23. It is not enough that the employees attend the place of work. They must put in the work allotted to them. It is for the work and not for their mere attendance that the wages/salaries are paid. For the same reason, if the employees put in the allotted work but do not, for some reason -- may be even as a protest -- comply with the formalities such as signing the attendance register, no deduction can be effected from their wages. When there is a dispute as to whether the employees attended the place of work or put in the allotted work or not, and if they have not, the reasons therefore etc., the dispute has to be investigated by holding an inquiry into the matter. In such cases, no deduction from the wages can be made without establishing the omission and/or commission on the part of the employees concerned".

However, it is no doubt true that at paragraph 24 of the judgment, the Court has laid down that when a contract/standing orders or service rules/regulations are silent, but enactments such as the Payment of Wages Act, providing for wage cuts for the absence from duty is applicable to the establishment concerned, the wages can be deducted even under the provisions of such enactments. Again at paragraph 25 of the judgment, the Supreme Court after referring to the definition of wages provided u/s 2(rr) of the Wages Act and the definition of wages u/s 2(q) of the Wages Act has held that when the workers do not put in the allotted work or refuse to do it, they would not be entitled to the wages proportionately. Therefore, the principle of law enunciated by the Supreme Court in the said case as noticed by us earlier, was whether it is permissible for the

Corporation to deduct wages for the entire day when the employees absent themselves from duty for a part of the day or few hours in a day. In that background, the Supreme Court placing reliance on the provisions contained in Section 9 of the Wages Act took the view that though the said provision has no application, the principle enunciated under the said provision can be usefully applied and wages can be deducted for the entire day if the workmen absented themselves for a part of the day. We are unable to accede to the submission of Sri Rao that the observations made in the judgment and more particularly at paragraph 28 of the judgment should be understood as giving uncontrolled and unbridled power to the Corporation to deduct wages upto eight days for each day's absence in addition to deduction of wages for the period of absence by the workmen. As noticed by us earlier, we have carefully gone through the judgment and from the observations made in the judgment, we are not able to discern or appreciate any such principle having been enunciated by the Supreme Court. The Supreme Court while discussing the law as to when the law laid down by the Supreme Court will be a binding precedent, in the case of *M/s. A-One Granites Vs. State of U.P. and Others*, , after referring to the decision of the Supreme Court in the case of *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, , has laid down that the decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue and which has escaped the judgment cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141 and is not a ratio decidendi. In the said decision at paragraphs 10 and 11 of the judgment it is observed as hereunder:

"10. The first question which falls for consideration of this Court is as to whether the question regarding applicability of Rule 72 of the Rules in relation to the present lease is concluded by the earlier decision of this Court rendered in *Prem Nath Sharma Vs. State of U.P. and another*, , . From a bare perusal of the said judgment of this Court it would be clear that the question as to whether Rule 72 was applicable or not was never canvassed before this Court and the only question which was considered was whether there was violation of the said rule.

11. This question was considered by the Court of Appeal in *Lancaster Motor Company (London) Limited v. Bremith Limited* (1941)1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment, Following the said decision, this Court in the case of *Municipal Corporation of Delhi Vs. Gurnam Kaur*, observed thus:

"In *Gerard v. Worth of Paris Limited (K)* (1936) 2 All ER 905 the only point argued was on the question of priority of the claimant's debt, and on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor*

Company (London) Limited, *supra*, the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed *sub silentio* by Counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier Court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents *sub silentio* and without argument are of no moment. This rule has ever since been followed"

In *Synthetics and Chemicals Limited's* case, *supra*, reiterating the same view, this Court laid down that such a decision cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India and observed thus:

"A decision which is not express and is not founded on reason nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141".

In the case of *Arnit Das Vs. State of Bihar*, , while examining the binding effect of such a decision, this Court observed thus (Para 20):

"A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the *ratio decidendi*. This is the rule of *sub silentio*, in the technical sense when a particular point of law was not consciously determined".

The decision of the Supreme Court in the case of *Kelawala*, *supra*, as noticed by us earlier, was mainly dealing with the question when employees are absent from duty for a part of the day, whether it is permissible for the employer to deduct wages for the entire day. That was also considered in the backdrop of absence of any regulations governing the said situation; that is not the situation here. Therefore, we are of the view that the principle laid down by the Supreme Court in the case of *Kelawala*, *supra*, strongly relied upon by Sri Rao cannot be considered as a binding precedent to take the view that it was permissible for the Corporation to deduct additional wages for the period of absence in addition to deduction of wages for each day's absence. It is true that while considering the observation made by a high judicial authority like the Supreme Court, care must be taken to relate the observation of the Court to the precise issues before the Court and to confine such observation even though expressed in broad terms in general compass of the question before the Court. The decision of the Courts should not be followed generally like a statute irrespective of their particular fact situation; and in order to understand and appreciate the binding force of the decision, it is always necessary to see what were the facts of the case in which the decision was rendered and what was the point which was decided. It is well-settled that the decision is an authority only for what it actually decides and not

for what may logically follow from it. Every judgment must be read as applicable to the particular facts proved since generality of the expressions which may be found there are not intended to expositions of whole law but governed or modified by the particular facts of the case in which such expressions are to be found. In the case of M/s. A-One Granites, supra, while considering the question as to whether the applicability of Rule 72 of the Uttar Pradesh Minor Mineral (Concession) Rules, 1963 was concluded by the earlier decision of the Supreme Court rendered in the case of Prem Nath Sharma, supra, the Supreme Court took the view that the question as to whether Rule 72 was applicable or not was never canvassed before the Court in the case of Prem Nath Sharma, supra and the only question which was considered was whether there was violation of the said Rule and therefore, the earlier decision was not binding.

12. Having taken the view that the judgment of the Supreme Court in the case of Kelawala, supra, is of no assistance to support the contention of Sri Rao, we find it is desirable to independently examine whether the provisions contained in proviso given to Sub-section (2) of Section 9 of the Wages Act can be applied to the facts of the present case. The Corporation in exercise of the power conferred on it under Sections 14 and 45 of the Road Transport Corporations Act, 1950 with the previous sanction of the State Government has framed the Regulations known as the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971. The said regulation provides for initiation of disciplinary proceedings and imposition of penalty. Part-III of the Regulations provides for initiation of disciplinary proceedings. Regulation 18 of the Regulations provides for imposition of both minor and major penalties, Clause (v) of Regulation 18-A which provides for levy of minor penalty reads as follows:

"18-A (v) Recovery from his wages or salary of the whole or part of any pecuniary loss caused by him to the Corporation by negligence or breach of orders or unauthorised absence from duty".

Further, it is also necessary to point out that Section 26 of the Industrial Disputes Act provides for imposition of punishment on any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under the Act. The Tribunal as well as the learned Single Judge have found that the strike resorted to by the workmen was illegal. Therefore, when a penalty is provided u/s 26 of the Act for illegal strike, it appears to us that it is not permissible for the Corporation to deduct additional eight days wages for each day's absence in addition to the deduction of wages for each day's absence. When the Regulations framed by the Corporation which provides for disciplinary proceedings and imposition of punishment and also Section 26 of the Industrial Disputes Act provides for imposition of punishment for illegal strike, it is not permissible to apply the principle provided in Section 9 of the Wages Act to deduct additional wages for each day's absence, however, one may disapprove of the concerned action of the workmen resorting to strike. In our view, we are also supported by the decision of the Andhra Pradesh High Court in the case of

G.Y.N. Chainulu and Others Vs. The Depot Manager, A.P.S.R.T.C., Amalapuram and Another, , In the said decision, while considering the similar question after referring to the decision of the Supreme Court in the case of Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, supra, the Court observed as follows:

"Therefore once a strike was declared to be illegal by operation of notification issued u/s 3 of the Essential Services Maintenance Act, then it is not a due notice, thereby the first limb of proviso to Sub-section (2) of Section 9 is not satisfied. Then the question is whether the management is entitled to deduct three days wages, as ordered in this case. In this case, the right to deduct wages is only a right the employer has against the employees for their absence from duty without due notice and without reasonable cause. But, such absence from duty was declared to be an offence or penal, by operation of Section 4 of the aforesaid Act. Section 4 provides penalty for such absence from duty with imprisonment or with penalty or with both, Therefore, it creates penal consequences. The right to deduct wages for the same offence is created under the proviso to Section 9(2) of the Act. Thereby, since the right given u/s 9(2) is inconsistent with the penalty or the liability created u/s 4 of the Essential Services Maintenance Act, Section 8 of the aforesaid Act prevails over Section 9(2) proviso of the Wages Act. Thereby, the necessary action to be taken by the Management by statutory operation is under the Essential Services Maintenance Act alone. In Rohtas Industries Limited's case, supra, the decision relied on by Sri Prabhakar Rao clearly supports this conclusion. In paragraph 28 it was held:

". . . . the compensation claimed and awarded is a direct reparation for the loss of profits of the employer caused by the illegal strike. If so, it is contended by the respondents, the remedy for the illegal strike and its fall out has to be sought within the statute and not de hors it. If this stand of the workers is right, the remedy indicated in Section 26 of the Act viz., prosecution for starting and continuing an illegal strike, is the designated statutory remedy. No other relief outside the Act can be claimed on general principles of jurisprudence. The result is that the relief of compensation by proceedings in arbitration is contrary to law and bad".

The same ratio applies to the facts in this case. Once it is found that the remedy under proviso to Section 9(2) of the Wages Act is inconsistent with penal consequences u/s 4 of the Essential Services Maintenance Act, then the recourse could be had only to section by operation of Section 8 thereof and not de hors it".

We are in respectful agreement with the said view. Further, the observation made by the Supreme Court in the case of Rohtas Industries, supra, extracted by the Andhra Pradesh High Court also clearly indicates that it is not permissible of the Corporation to deduct any wages by way of compensation out of the wages payable to the workmen on the ground they had gone on strike. Therefore, we are of the view that the award passed by the Tribunal as well as the learned

Single Judge are liable to be set aside holding that it was not permissible for the Corporation to deduct additional wages payable to the workman in addition to the deduction of wages for days of their absence. So far as the decision in the case of Binny Limited, *supra*, relied upon by Sri Rao in support of his contention that it is permissible for the Corporation to deduct eight days wages for each day's absence is concerned, we are of the view that the said decision has no application to the facts of the present case. The Madras High Court in the said decision permitted the management to deduct three days wages as against the deduction of eight days wages by the management in the backdrop of the power reserved to the management under Clause 20 of the Certified Standing Order. This is clear from the discussion made by the Court at paragraph 11 of the judgment.

13. So far as the third submission of Sri Narasimhan that deduction from wages has to be made within ten days from the expiry of the month in which the employees absented themselves from duty or resorted to strike is concerned, we are not impressed with the said submission. Sri Narasimhan cannot derive any assistance from Sections 3 and 4 of the Wages Act. We are of the view that the provisions contained in Section 4 which provides for fixing of wage period and provisions contained in Section 5 which provides for payment of wages is of no assistance to Sri Narasimhan to support his contention that the employer loses his right to deduct wages if the wages are not deducted within the month during which the employees absent themselves from duty. The beneficial legislation cannot be understood to mean to compel the employer to deduct the wages immediately. Sections 7 and 9 of the Act which empowers the employer to make certain deductions out of the wages payable to the employees in our view has to be reasonably understood and interpreted. If so interpreted, we do not find any warrant to accept the submission of Sri Narasimhan that if the wages are not deducted during the month in which the employees absented themselves from work within ten days from the expiry of the month during which the employees absented themselves, the Corporation would lose its right to deduct wages for such absence out of the wages payable to the employees for the subsequent month. Therefore, this contention is rejected as one devoid of any merit.

14. Now, the next question is whether there is any merit in the fourth submission of Sri Narasimhan that since in the pleadings before the Tribunal it was not claimed on behalf of the Corporation that the provision of the Wages Act were made applicable while imposing the penalty in question, the award passed by the Tribunal is required to be quashed? No doubt, it is true that in the pleadings before the Tribunal, it is not specifically asserted that the penalty in question was imposed either in exercise of the power conferred on the Corporation applying the proviso given to Sub-section (2) of Section 9 of the Wages Act or applying the principle governing the said provision. However, it is necessary to point out that the order passed proposing to impose the penalty on the workmen specifically refers to the provisions of proviso given to Sub-section (2) of Section 9 of the Wages Act. Therefore, when the order itself is a part of the proceedings,

it is not possible to accept the submission of Sri Narasimhan that merely because it is not specifically pleaded before the Tribunal that the punishment in question was imposed in exercise of the power conferred on the Corporation under proviso given to Sub-section (2) of Section 9 of the Act or applying the principle laid down by the Supreme Court, the award passed is liable to be quashed. Probably, Sri Narasimhan would be right if the order had not indicated the source of the power and the pleadings were silent. When the order itself speaks of the source of the power and the order of reference also refers to the source of power exercised by the Corporation to impose the penalty in question, in our view, the absence of not specifically pleading on that behalf before the Tribunal will not vitiate the award. Therefore, we do not find any merit in the fourth submission of Sri Narasimhan.

15. Though it is the fifth submission of Sri Narasimhan that even if the strike resorted to is held to be illegal, still the workmen had reasonable cause to absent themselves from duty and therefore, the principles governing Section 9 of the Wages Act cannot be applied to deduct the wages, we do not find any merit in the said submission, No doubt, strike is a weapon in the armoury of the workmen to bargain for better service conditions with the employers, just as lock-out is a weapon in the armoury of the employers to keep the workmen under control. However, by that alone, it is not possible to take the view that even if the strike is held to be illegal, still the workmen could show that their absence from duty was on account of reasonable cause. In our view, once it is held that the workmen had absented themselves from duty on account of the illegal strike resorted to by them, it will not be permissible for the workmen to plead that even if the strike was illegal, still their absence was on account of reasonable cause. It is not possible to take the view that when a strike is declared as illegal, the absence from duty on such circumstances could be held to be on account of reasonable cause. When illegal strike is made as an offence and punishable u/s 26 of the I.D. Act, it is not possible to take the view that absence from duty by the workman on account of illegal strike could in certain circumstances be on account of reasonable cause. Once the strike is held to be illegal, in our view for the purpose of deciding the question whether it is a reasonable cause or not, the object or the motive of the strike cannot be gone into. The reasonable cause in the circumstances must be understood as to whether the action in question was reasonable or not. We also do not find any merit in the submission of Sri Narasimhan that the finding recorded by the Tribunal as well as the learned Single Judge that the strike resorted to by the workman was illegal is erroneous in law. The Tribunal on consideration of materials on record has found that the strike resorted to by the workmen was illegal. The said finding has been affirmed by the learned Single Judge. Further, from the observation made in the award it is also seen that there was no serious dispute raised by the workmen on this question. The finding recorded by the Tribunal that the strike is illegal is supported by materials on record; and the said finding being purely a question of fact, does not suffer from any error apparent on the face of the record which

calls for interference by this Court in exercise of its power under Articles 226 and 227 of the Constitution of India.

16. We do not find any merit in the sixth submission of Sri Narasimhan that the proviso given to Sub-section (2) of Section 9 of the Act is required to be struck down on the ground that it is highly unreasonable, arbitrary and discriminatory in nature and violative, of the right of equality guaranteed under Article 14 of the Constitution of India as urged by Sri Narasimhan. In our view, this submission is liable to be rejected on two grounds. Firstly, on the ground that since the penalty in question was not imposed by the Corporation in exercise of the power under proviso given to Sub-section (2) of Section 9 of the Act, the workmen cannot be permitted to challenge the validity of the said provision. Admittedly, the Act has no application to them as their emoluments are not less than Rs. 1,600/- p.m. Secondly, even on merits of the contention, we do not find any substance. From the scheme of the Act it is clear that it intends to give protection to the workmen whose emoluments are less than Rs. 1,600/- p.m. Therefore, if the Parliament has passed the Act in question keeping in mind the section of the employees whose emoluments is less than Rs. 1,600/- p.m. they should be given protection, from irregular payment of wages and various other protection provided under the act and the employees who are getting more than Rs. 1,600/- p.m. are excluded from the purview of the benefit of the legislation. The said classification based on emoluments drawn cannot be said to be an unreasonable or arbitrary classification. When a legislation is challenged on the ground of discrimination or arbitrariness, the burden is on the party who assails the constitutional validity of the such a provision. The workmen have failed to prima facie establish that the classification made based on monthly emoluments received by the workmen is either unreasonable or arbitrary. The emoluments fixed at Rs. 1,600/- p.m. to extend the benefit of the provisions of the Act would not ex facie demonstrate that it is unreasonable or arbitrary. It is also not possible to take the view that there is no nexus with the classification made and the object of the legislation. Therefore, we do not find any good ground to strike down the impugned provision, The decision of the Supreme Court in the case of H.R. Adyanthaya, supra, relied upon by the learned Additional Central Government Standing Counsel also supports the view we have taken above. In the said decision, the Supreme Court has laid down that when a legislation extends protective umbrella to the employees of a particular class, it cannot be faulted so long as the classification made is intelligible and has a rational nexus with the object sought to be achieved. In the said decision, the Court further took the view that the classification made between two categories of sales promotion employees i.e., those drawing wages up to an upper limit and those drawing wages above it was fairly intelligible on the ground that the object of the legislation being to give protection of service conditions to the weaker sections of the employees belonging to that category. It is useful to refer to the observation made by the Court which reads as hereunder:

"What service conditions would be available to particular employees, whether

they are liable to be varied, and to what extent are matters governed either by the statute or the terms of the contract. The Legislature cannot be mandated to prescribe and secure particular service conditions to the employees or to a particular set of employees. The service conditions and the extent of their protection as well as the set of employees in respect of which they may be prescribed and protected, are all matters to be left to the Legislature. Hence, when a legislation extends protective umbrella to the employees of a particular class, it cannot be faulted so long as the classification made, is intelligible and has a rational nexus with the object sought to be achieved. In the present case, the classification made between two categories of the sales promotion employees, viz., those drawing wages upto a particular limit and those drawing wages above it, is fairly intelligible. The object of the legislation further appears to be to give protection of the service conditions to the weaker section of the employees belonging to the said category..... According to us, it is permissible to classify workmen on the basis of their income although the work that they do is of the same nature. The protective umbrella need not cover all the workmen doing the particular type of work, It can extend to them in stages. At what stage which of the said section of the employees should come under the said umbrella is a matter which should be left to the Legislature which is the best judge of the matter. We, therefore, do not see any merit in the contention".

17. The next question that is required to be considered is whether the provisions of Section 9 of the Wages Act has been impliedly repealed in view of the provisions contained in the I.D. Act and more particularly Sections 22 to 24? It is well-settled that when a Competent Authority makes a new law which is totally inconsistent with the earlier law and that the two cannot stand together any longer it must be construed that the earlier law had been repealed by necessary implication by the later law. Therefore, when a question arises as to whether a later enactment has impliedly repealed the earlier enactment, the Courts will have to carefully examine the provisions contained in both the enactments and on examination of the provisions in both the enactments the view that is required to be taken is that if the later law is totally inconsistent with the earlier law and the enactments cannot stand together and both the legislations operate in the same field, then it must be construed that the earlier law had been repealed by necessary implication by the later law. Keeping these principles in mind we will have to now examine whether the provisions contained in Industrial Disputes Act and more particularly Sections 22 to 24 which is a later enactment has impliedly repealed the provisions contained in Section 9 of the Wages Act as contended by Sri Narasimhan. The object of the Industrial Disputes Act is to settle the dispute between the management and the labour and to bring about industrial harmony or peace. Sub-section (1) of Section 22 of the Act prohibits any person employed in public utility service from going on a strike in breach of contract and under several circumstances set out in the said section. Sub-section (2) of the said provision prohibits declaring lock-out without complying with the provisions contained in the said sub-section. Section 23 in general prohibits the workmen

from going on a strike in an industrial establishment in breach of contract and also prohibits the employer to declare lock-out under various circumstances set out in the said provision. Section 24 of the Industrial Disputes Act sets out as to under what circumstances a strike or a lock-out is termed as illegal. However, the Wages Act has been passed with a view to assure regular payment of wages to the workmen without there being any unauthorised deductions by the employers. The provision contained in Section 9 of the Act which provides for deductions from wages for absence from duty cannot be construed as a provision made for imposing punishment on the employees for their absence from duty. The Wages Act applies only to such of those employees whose monthly salary is not more than Rs. 1,600/- p.m. The Industrial Disputes Act applies to all persons who are workmen within the definition of Section 2(s) of the I.D. Act. The operation and application of the Industrial Disputes Act is quite different and distinct from the area of operation of the Wages Act. However, in this connection it is useful to refer to the observation made by the Supreme Court in the case of *M.A. Tulloch and Company*, *supra*, which reads as follows:

"The entire theory underlying implied repeal is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using, any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word "repeal" in the later statute. Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded could there be any incongruity in attributing to the later legislation the same intent which Section 6 presumes where the word "repeal" is expressly used".

In the case of *Ratan Lal Adukia*, *supra*, the Supreme Court at paragraph 11 has observed as follows:

"The doctrine of implied repeal is based on the postulate that the Legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts, in applying this doctrine are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But, in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously. Section 80 is a special provision. It deals with certain class of suits distinguishable on the basis of their particular subject-matters".

Therefore, we do not find any merit in the submission of the learned Counsel for the Federation that the provisions contained in Section 9 of the Wages Act has been impliedly repealed.

18. The only question that remains to be considered is as to whether the quantum of punishment imposed proposing to deduct four days wages for each day's absence is required to be modified and reduced by this Court on the ground urged by Sri Narasimhan or it has to be enhanced as contended by Sri Rao. While the management has deducted eight days wages for each day's absence, the Tribunal has modified the same and limited it to four days for each day's absence. As noticed by us earlier, the learned Single Judge has affirmed the same. We have accepted the finding recorded by the Tribunal that the strike resorted to by the workmen was illegal. It cannot be seriously disputed that on account of the strike resorted to, the members of the travelling public were put to serious hardship and inconvenience. The services rendered by the employees of the Corporation has been treated as an essential service. We are not impressed with the submission of Sri Narasimhan that in any strike whether it is legal or illegal, some inconvenience or hardship is bound to be caused to the Corporation and also the general public and therefore, that cannot be made as the basis to impose the quantum of punishment on the workmen; and even if the additional wages is required to be deducted for each day's absence, it should not be more than a day's wage in addition to the deduction of wages for the day of absence. No doubt, it is true that in appropriate cases, it is permissible for this Court to modify the quantum of punishment imposed by the Tribunal or the Labour Court. However, having regard to the facts and circumstances of this case, we do not find any justification to modify the quantum of punishment imposed by the Tribunal which has been affirmed by the learned Single Judge, in exercise of our appellate jurisdiction. In our view, the decision of the Supreme Court in the case of Kerala Solvent, *supra*, relied upon by Sri Rao, learned Counsel appearing for the Corporation is of no assistance to him in support of his submission that the penalty imposed by the Corporation should be restored. No doubt, in the said decision, the Supreme Court held that Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence and it is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions while imposing penalty. As noticed by us earlier, the quantum of penalty imposed by the Tribunal has been affirmed by the learned Single Judge. The Facts of this case, as noticed by us earlier, does not persuade us to modify the award passed by the Tribunal so far as it relates to the direction made for deduction of wages for absence of workmen from duty is concerned. In the case of Kerala Solvent, *supra*, the Question that came up for consideration before the Court was whether the Labour Court and the High Court were justified in taking the view that the workman who had suppressed his qualification was entitled for reinstatement. In the light of what is stated above, we do not find any merit in the submission of Sri Rao that the Tribunal was not justified in modifying the deduction of eight days wages proposed by the Corporation and limiting it for four days.

19. As noticed by us earlier, though Sri Rao, learned Counsel appearing for the

Corporation has referred to several decision in addition to the decision of the Supreme Court, in the case of Kelawala, supra, in our view, none of the decisions relied upon by him is of any assistance to him, Therefore, we find it unnecessary to refer to the said decisions in greater detail.

20. Therefore, in the light of the discussion made above, we make the following order:

(i) We hereby declare that the Corporation is not entitled to deduct wages for the absence of the workman from duty in addition to the deduction of wages for the dates on which they absented themselves from duty either u/s 9 of the Wages Act or taking guidance from the said provision. Accordingly, the award dated 25th November, 1997 made in ID No. 5 of 1993 by the Industrial Tribunal is hereby quashed;

(ii) Consequently, the order dated 11th September, 2000 made in Writ Petition Nos. 14636 and 15701 of 1998 by the learned Single Judge is also hereby set aside insofar as it relates to deduction of wages in addition to the period of absence of the employees from their duty;

(iii) However, this order will not come in the way of the Corporation initiating appropriate disciplinary proceedings if it so desires, against the employees of the Corporation for their alleged unauthorised absence from duty, if it is permissible in law and in accordance with law;

(iv) In terms stated above, Writ Appeal Nos. 1005 and 1006 of 2000 are allowed and disposed of. Writ Appeal No. 6347 of 2000 is dismissed.

21. However, no order is made as to costs.