

# LABOUR LAW

Paper I

## ASSIGNMENT

(Semester III)

TOPIC: STRIKE AND LOCK-OUT

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## **STRIKE AND LOCK-OUT**

### ➤ Introduction:

Strike and lock-out are two powerful weapons in the hands of the workers and the employers. Strike signifies the suspension or stoppage of work by the worker while in case of lock-out the employer compels persons employed by him to accept his terms or conditions by shutting down or closing the place of business. Strike is recognized as an ordinary right of social importance to the working class to ventilate their grievances and thereby resolve industrial conflict.

Skillful use of these weapons, whether threatened or actual, may help one party to force the other to accept its demand or atleast to concede something to them. But reckless use of them results in the risk of unnecessary stoppage of work hurting both parties badly creating worse tensions, frictions and violations of law and order. From the point of view of the public, they retard the nation's economic development. India cannot tolerate frequent stoppage of work for frivolous reasons that often accompany it.

For these reasons, the Industrial Disputes Act seeks to regulate and restrict strikes and lock-outs so that neither the workmen nor employers may hold the nation to ransom.

### **STRIKE:**

#### ➤ Definitions:

Strike as defined in clause (q) of Section 2 of the Act means:

1. Cessation of work by a body of persons employed in any industry acting in combination; or
2. A concerted refusal of any number of persons who are or have been employed in any industry to continue to work or to accept employment; or
3. A refusal under a common understanding of any number of persons who are or have been employed in any industry to continue to work or to accept employment.

Thus the definition given in the act postulates three main things or ingredients:

- (a) Plurity of workmen;
- (b) Combination or concerted action;
- (c) Cessation of work or refusal to do work.

➤ **Historical Background:**

Strikes came into existence in the wake of the Industrial Revolution. With the invention of machinery to supplant human labour, unemployment, lowering of wages in a competitive market, supply of labour in excess of demand - became the order of the day.

The first known strike was in the 12<sup>th</sup> century B.C., in Egypt. Workers under Pharaoh Ramses III stopped working on the Necropolis until they were treated better.<sup>1</sup>

The use of the English word 'strike' first appeared in 1768 when sailors in support of demonstrations in London, "struck or removed the topgallant sails of merchant ships at port thus, thus crippling the ships."<sup>2</sup>

As the 19th century progressed, strikes became a fixture of industrial relations across the industrialized world, as workers organized themselves to bargaining for better wages and standards with their employees.

The 1974 railway strike in India was the strike by workers of Indian Railways in 1974. The 20 days strike by 17 lakh workers is the largest known strike in India. The strike was held to demand a raise in pay scale, which had remained stagnant over many years, in spite of the fact that pay scales of other government owned entities had risen over the years.<sup>3</sup>

Strikes became common during the Industrial Revolution, when mass labor became important in factories and mines. In most countries, strike actions were quickly made illegal, as factory owners had far more political power than workers. However, most western countries partially legalized striking in the late 19th or early 20th centuries.

➤ **Meaning:**

Strike means the stoppage of work by a body of workmen acting in concert with a view to bring pressure upon the employer to concede to their demands during an industrial dispute.

**Indian Iron & Steel Ltd. v/s Its Workmen**<sup>4</sup>

Held: Mere cessation of work does not come within the preview of strike unless it can be shown that such cessation of work was a concerted action for the enforcement of an industrial demand.

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<sup>1</sup> Simple.wikipedia.org visited on 21/10/2013

<sup>2</sup> En.wikipedia.org visited on 21/10/2013

<sup>3</sup> En.wikipedia.org visited on 21/10/2013

<sup>4</sup> (1967)1 LLJ 381 (Pat).

Cessation of work or refusal to work is an essential element of strike. This is the most significant characteristic of the concept of strike. There can be no strike if there is no cessation of work. The cessation of work may take any form. It must however be temporary and not forever and it must be voluntary. No duration can be fixed for this in fact duration for cessation of work is immaterial. Cessation of work even for half an hour amounts to strike.

Buckingham & Carnatak Co. Ltd. v/s Workers of Buckingham& Carnatak Co. Ltd.<sup>5</sup>

On the 1<sup>st</sup> November, 1948 night shift operators of carding and spinning department of the Carnatak Mill stopped work some at 4 p.m. some at 4:30 p.m. and some at 5 p.m. The stoppage ended at 8 p.m. in both the departments. By 10 p.m. the strike ended completely. The cause for the strike was that the management of the Mills had expressed inability to comply with the request of the workers to declare 1<sup>st</sup> November, 1948 as a holiday for solar eclipse. Supreme Court held it strike.

Concerted action is another important ingredient of strike. The workers must act under a common understanding. The cessation of work by a body of persons employed in any industry in combination is a strike. Stoppage of work by workers individually does not amount to strike.

Ram Sarup & Another v/s Rex<sup>6</sup>

Held: Mere absence from work is not enough but there must be concerted refusal to work, to constitute a strike.

The object of an industrial strike is achievement of economic objectives or defence of mutual interests. The objects of strikes must be connected with the employment, non-employment, terms of employment or terms and conditions of labour because they are prominent issues on which the workers may go on strikes for pressing their demands and such objects include the demands for codification of proper labour laws in order to abolish unfair labour practices prevalent in a particular area of industrial activity. The strike may also be used as a weapon for betterment of working conditions, for

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<sup>5</sup> AIR 1953 SC 47

<sup>6</sup> AIR 1949 All 218

achievement of safeguards, benefits and other protection for themselves, their dependents and for their little ones.

In B. R. Singh v/s Union of India<sup>7</sup> it was held that the strike is a form of demonstration. Though the right to strike or right to demonstrate is not a fundamental right, it is recognized as a mode of redress for resolving the grievances of the workers. Though this right has been recognized by almost all democratic countries but it is not an absolute right.

In T.K. Rangarajan v/s Tamil Nadu<sup>8</sup>, the Tamil Nadu government terminated the services of all employees who resorted to strike. The Apex Court held that Government staffs have no statutory, moral or fundamental right to strike.

In 2005, the Supreme Court reiterated that lawyers have no right to go on strike or give a call for boycott and not even a token strike to espouse their causes.

In Dharma Singh Rajput v/s Bank of India, it was held that right to strike as a mode of redress of the legitimate grievance of the workers is recognized by the Industrial Disputes Act. However, this right is to be exercised after complying with the conditions mentioned in the Act and also after exhausting the intermediate and salutary remedy for conciliation.

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<sup>7</sup> (1989) II Lab LJ 591 (SC)

<sup>8</sup> (2003) 7 ACE 30

## **Causes of Strikes:-**

In the early history of labor troubles the causes of strikes were few. They arose chiefly from differences as to rates of wages, which are still the most fruitful sources of strikes, and from quarrels growing out of the dominant and servient relations of employers and employees. While labor remained in a state of actual or virtual servitude, there was no place for strikes. With its growing freedom "conspiracies of workmen" were formed, and strikes followed. The scarcity of labor in the fourteenth century, and the subsequent attempts to force men to work at wages and under conditions fixed by statute, were sources of constant difficulties, while the efforts to continue the old relation of master and servant with its assumed rights and duties, a relation law recognizes to this day, were, and still are, the causes of some of the most bitter strikes that have ever occurred.

Strikes are caused by differences as to<sup>9</sup>:

1. Rates of wages and demands for advances or reductions i.e. Bonus, profit sharing, provident fund and gratuity.
2. Payment of wages, changes in the method, time or frequency of payment;
3. Hours of labor and rest intervals;
4. Administration and methods of work, for or against changes in the methods of work or rules and methods of administration, including the difficulties regarding labor-saving machinery, piece-work, apprentices and discharged employees;
5. Trade unionism.
6. Retrenchment of workmen and closure of establishment.
7. Wrongful discharge or dismissal of workmen.

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<sup>9</sup> [Industrialrelations.naukrihub.com/strikes.html](http://Industrialrelations.naukrihub.com/strikes.html)

➤ Kinds of Strike:

There are mainly three kinds of strike, namely general strike, stay-in-strike and go slow.

1. General Strike:

In General Strike, the workmen join together for common cause and stay away from work, depriving the employer of their labour needed to run his factory. Token Strike is also a kind of General Strike. Token Strike is for a day or a few hours or for a short duration because its main object is to draw the attention of the employer by demonstrating the solidarity and co-operation of the workers. General Strike is for a longer period. It is generally resorted to when employees fail to achieve their object by other means including a token strike which generally precedes a General Strike. The common forms of such strikes are organized by central trade unions in railways, post and telegraph, etc. Hartals and Bundhs also fall in this category.

2. Stay-in-Strike:

It is also known as 'tools-down-strike' or 'pens-down-strike. It is the form of strike where the workmen report to their duties, occupy the premises but do not work. The employer is thus prevented from employing other labour to carry on his business.

Mysore Machinery Manufacturers v/s State<sup>10</sup>

Held: Where dismissed workmen were staying on premises and refused to leave them, did not amount to strike but an offence of criminal trespass.

Punjab National Bank Ltd. v/s Their workmen<sup>11</sup>

Held: Refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees entered the premises of the bank and refused to take their pens in their hands would no doubt be a strike under section 2(q).

3. Go-Slow:

In a 'Go-Slow' strike, the workmen do not stay away from work. They do come to their work and work also, but with a slow speed in order to lower down the production and thereby cause loss to the employer.

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<sup>10</sup> AIR 1966 Mys 51

<sup>11</sup> AIR 1960 SC 160

Sasa Musa Sugar Works Pvt. Ltd. v/s Shobrati Khan & Ors<sup>12</sup>

Held: Go-Slow strike is not a “strike” within the meaning of the term in the Act, but is serious misconduct which is insidious in its nature and cannot be countenanced.

In addition to these three forms of strike which are frequently resorted to by the industrial workers, a few more may be cited although some of them are not strike within the meaning of section 2(q).

- i. **Hunger Strike:** In Hunger Strike a group of workmen resort to fasting on or near the place of work or the residence of the employer with a view to coerce the employer to accept their demands.

Piparaich Sugar Mills Ltd. v/s Their Workmen<sup>13</sup>

Certain employees who held key positions in the mill resorted to hunger strike at the residence of the managing Director, with the result that even those workmen who reported to their duties could not be given work.

Held: That concerted action of the workmen who went on Hunger Strike amounted to “strike” within the meaning of this sub-section.

- ii. **Sympathetic Strike:** A Sympathetic Strike is resorted to in sympathy of other striking workmen. It is one which is called for the purpose of indirectly aiding others. Its aim is to encourage or to extend moral support to or indirectly to aid the striking workmen. The sympathizers resorting to such strike have no demand or grievance of their own.
- iii. **Work to rule:** Here the employees strictly adhere to the rules while performing their duties which ordinarily they do not observe. Thus strict observance of rules results in slowing down the tempo of work causes inconvenience to the public and embarrassment to the employer. It is no strike because there is no stoppage of work at all.

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<sup>12</sup> AIR 1959 SC 923

<sup>13</sup> AIR 1960 SC 1258

## LOCK-OUT

➤ Definition:

“Lock-Out” has been defined in section 2 (1) to mean the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

➤ Background:

India witnessed lock-out twenty-five years after the "lock-out" was known and used in the arena of labour management relations in industrially advanced countries. The first known lock-out was declared in 1895 in Budge Budge Jute Mills<sup>14</sup>.

➤ Meaning:

Strike is a weapon in the hands of the labour to force the management to accept their demands. Similarly, Lock-Out is a weapon in the hands of the management to coerce the labour to come down in their demands relating to the conditions of employment.

Lock-Out is the keeping of labour away from works by an employer with a view to resist their claim.

There are four ingredients of Lock-Out:-

1. (i) temporary closing of a place of employment by the employer, or  
(ii) suspension of work by the employer, or  
(iii) refusal by an employer to continue to employ any number of persons employed by him;
2. The above mentioned acts of the employer should be motivated by coercion.
3. An industry as defined in the Act; and
4. A dispute in such industry.

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<sup>14</sup> <http://www.legalserviceindia.com>

Lock-Out has been described by the Supreme Court as the antithesis of strike.

Shri. Ramchandra Spinning Mills v/s State of Madras<sup>15</sup>

Held: If the employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees or generally speaking when his act is what may be called an act of belligerency there would be a lock-out.

In case of Lock-Out the workmen are asked by the employer to keep away from work, and, therefore they are not under any obligation to present themselves for work. So also Lock-Out is due to and during an industrial dispute.

➤ Causes:

A lockout is generally used to enforce terms of employment upon a group of employees during a dispute. A lockout can act to force unionized workers to accept changed conditions such as lower wages. If the union is asking for higher wages, or better benefits, an employer may use the threat of a lockout or an actual lockout to convince the union to back down.<sup>16</sup>

Lock-Outs may be caused by internal disturbances, when the factory management goes in to financial crisis or got succumbed into financial debts, disputes between workers and workers, disputes between workers and management or may be caused by ill-treatment of workers by the management. Sometimes lockouts may be caused by external influences, such as unnecessary political parties involvement in management of workers, union may be provoked for unjustified demands that may be unaffordable by the management, which may ultimately lead to lockout of the factory.<sup>17</sup>

1. Disputes or clashes between workers and the management.
2. Unrest, disputes or clashes in between workers and workers.
3. Illegal strikes, regular strikes or continuous strikes by workers.
4. Continuous or accumulated financial losses of factory or industry.
5. If any company involves in any fraudulent or illegal activities.
6. Failure in maintaining proper industrial relations, industrial peace and harmony.

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<sup>15</sup> AIR 1956 SC Mad 241.

<sup>16</sup> En.wikipedia.org visited on 23/10/2013

<sup>17</sup> whatishumanresource.com visited on 23/10/2013

➤ Prohibition of Strikes and Lock-outs:

**Section 22** of the Industrial Disputes Act, 1947, deals with the prohibition of strikes and lock-outs. This section applies to the strikes or lock-outs in industries carrying on public utility service. Strike or lock-out in this section is not absolutely prohibited but certain requirements are to be fulfilled by the workmen before resorting to strike or by the employers before locking out the place of business.

Conditions laid down in section 22(1) are to be fulfilled in case of strike and conditions as laid down in section 22(2) are to be fulfilled in case of any lock-out by the employer.

The intention of the legislature in laying down these conditions was to provide sufficient safeguards against a sudden strike or lock-out in public utility services lest it would result in great inconvenience not only to the other party to the dispute but to the general public and the society.

Section 22(1): No person employed in public utility service shall go on strike in breach of contract:

- a) Without giving to the employer notice of strike within six weeks before striking; or
- b) Within fourteen days of giving such notice; or
- c) Before the expiry of the date of strike specified in any such notice as aforesaid; or
- d) During the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings.

These provisions do not prohibit the workmen from going on strike but require them to fulfill the conditions before going on strike. These provisions apply to a public utility service only and not to a non- public utility service.

With regards to Notice of Strike, notice within six weeks before striking is not necessary where there is already a lock-out in existence. Secondly, notice may be given by the Trade Union or representatives of the workmen to do so. Thirdly, a notice of strike shall not be effective after six weeks from the date it is given. The strike can take place only when 14 days have passed but before 6 weeks have expired after giving such notice.

Section 22(2): No employer carrying on any public utility service shall lock-out any of his workmen:

- a) Without giving them notice of lock-out as herein after provided within six weeks before locking out; or
- b) Within fourteen days of giving such notice; or
- c) Before the expiry of the date of lock-out specified in any such notice as aforesaid; or
- d) During the pendency of any conciliation proceeding before a Conciliation Officer and seven days after the conclusion of such proceedings.

Section 22(3): Notice of strike or lock-out as provided by sub-sections (1) and (2) may in certain cases be dispensed with.

- (1) No notice of strike shall be necessary where there is already in existence a lock-out in the public utility service concerned.
- (2) No notice of lock-out shall be necessary where there is already in existence a strike in the public utility service concerned.

Sub-section (3) is in the nature of an exception of sub-sections (1) and (2) of section 22.

Bhaskaran v/s Sub-Divisional Officer<sup>18</sup>

Held: that posts and YTelegraphs Department, being Public Utility Service, cannot declare lock-out without notice and that the employees of the department cannot go on strike without notice.

Section 22(4): Notice of strike shall be given by such number of persons to such person or persons in such manner as may be prescribed.

Who will give notice?

- (i) By the President or Secretary or office-bearer of a registered Trade Union or federation.
- (ii) Where there is no registered Trade Union of workmen by at least seven representatives of workmen duly authorized in this behalf at a general meeting specifically held for the purpose.

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<sup>18</sup> (1982) 11 LLJ 248 (Ker)

The object of giving notice of strike is to enable the other party to make amends or to come to terms or redress the grievance or to approach the authorities to intervene and stop, if it is possible the threatened action.

Section 22(5): Notice of lock-out shall be given in such manner as may be prescribed.

Section 22(6): Deals with intimation of notices given under sub-section (1) or (2) to specified authorities.

If on any day an employer receives from any person employed by him any such notice as is referred to in sub-section (1), he shall within five days report to the Appropriate Government or to such authority as that Government may prescribe, the number of notices received on that day. Similarly, if any employer gives any notice as is referred to in sub-section (2), to any person employed by him, he shall report this fact within five days to the to the Appropriate Government or to such authority as that Government may prescribe.

➤ General prohibition of Strikes and Lock-outs:

The prohibition against strikes and lock-out contained in **Section 23** is general in nature. It applies to both public utility as well as non-public utility establishments. A strike in breach of contract by workmen and lock-out by the employer is prohibited in the following cases:

- (i) During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- (ii) During the pendency of conciliation proceedings before a Labour Court, Tribunal or National Tribunal, and two months after the conclusion of such proceedings;
- (iii) During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of section 10-A, or
- (iv) During any period in which a settlement or award is in operation in respect of the matters covered by such settlement or award.

The object of these provisions seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. This section because of its general nature of prohibition covers all strikes and lock-outs irrespective of the subject-matters of dispute pending before the authorities. However a conciliation proceeding before a conciliation officer is no bar to a strike or lock-out under this section, it is only a conciliation proceeding before a Board which is mentioned in this Act.

The provisions of section 23 shall apply to all industrial establishments. Section 23 applies to both public utility service as well as non-public utility service, while Section 22 applies to public utility service alone. Section 23 does not prohibit a strike or lock-out during the pendency of conciliation proceeding before a conciliation officer, Section 22 does so.

➤ Illegal Strikes and Lock-outs:

According to **Section 24(1)** Strike or lock-out shall be illegal if it is:

- (1) Commenced or declared in contravention of section 22 in a public utility service;
- (2) Commenced in contravention of section 23 in any industrial establishment ( including both public utility and non-public utility service);
- (3) Continued in contravention of an order made by the appropriate Government under section 10(3) or sub-section (4-A) of section 10-A of the Act.

Strike or lock-out in contravention of the provisions of Section 22 or Section 23 of the Act is declared illegal by Section 24 of the Act. A strike or lock-out which commenced as legal under Section 22 & 23 can be continued unless an order under Section 10(3) has been passed prohibiting the continuance of an existing strike or lock-out.

Sub-section (2) of Section 24 of the Act lays down that continuance of strike or lock-out is deemed to be illegal only if an order prohibiting it is passed under Section 10(3).

Sub-section (3) of Section 24 of the Act provides 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.

Thus Strike and lock-out shall not be deemed to be illegal if:-

- (i) At the commencement they are not in contravention of the provisions of this Act;
- (ii) Their continuance has not been prohibited by the appropriate Government under section 10(3) of the Act;
- (iii) A lock-out is declared in consequence of an illegal strike or vice versa.

Maharashtra General Kamgar Union v/s Balkrishna Pen P. Ltd.<sup>19</sup>

Held: when a strike is commenced before the expiry of 14 days notice, it will be illegal but only for the unexpired notice period and thereafter, the strike would be legal.

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<sup>19</sup> (1989) 1 Lab LJ 319 (Bom).

➤ Prohibition of financial aid to Illegal Strikes and Lock-outs:

**Section 25** of the Act prohibits financial aid to illegal strikes and lock-outs. The provisions of this section are attracted only if the strike or lock-out is illegal and not otherwise.

It says that no person shall knowingly spend or apply any money in direct furtherance or support of an illegal strike or lock-out. This section has the following ingredients:

- (i) Spending or applying money;
- (ii) Money spent or applied in direct furtherance or support of an illegal strike or lock-out;
- (iii) The strike or lock-out must actually be illegal;
- (iv) Knowledge on the part of the person expending or applying money that the strike or lock-out is illegal.

Thus for prosecuting a person for the contravention of Section 25, the prosecution must prove:-

- (a) That the strike or lock-out was illegal;
- (b) That the accused had the knowledge that the strike or lock-out was illegal and that the money spent by him was direct furtherance or support of the same.
- (c) That the money was spent by the accused.

It is only spending of money in support of a strike which is prohibited under this section. Therefore, helping the strikers by way of providing clothes or any other sort of help is not punishable under this Act.

**Section 28** provides penalty for giving financial aid to illegal strikes and lock-outs. Punishment may extend to six months' imprisonment or one thousand rupees fine or both.

➤ Punishment for Illegal Strikes:

If a strike is illegal the party guilty of the illegality is liable to punishment under **Section 26** of the Act.

Section 26(1) prescribes penalty which can be imposed on any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under this act. Thus to penalize a workmen under Section 26(1) two conditions must be fulfilled, namely,-

- (1) A workman must commence, continue or in some other manner act in furtherance of a strike ; and
- (2) Such strike must be illegal under the act.

Any workman found guilty of participating in an illegal strike shall be punishable with imprisonment of a term which may extend to one month or with a maximum fine of rupees fifty or with both.

Section 26(2) provides that an employer shall be punishable with imprisonment extending to one month or with a maximum fine of rupees one thousand or with both if,

- (1) Such employer commences, continues or otherwise acts in furtherance of a lock-out; and
- (2) Such lock-out is illegal under the act.

Even though the workers have a right to go a strike but it is not their fundamental right<sup>20</sup>. In case of illegal strike the guilty party has to undergo punishment. A distinction has been tried between illegal but justified strikes and illegal and unjustified strikes. For instance a strike may be illegal but it might have been taken recourse for good reasons and carried on in orderly and peaceful manner.

Crompton Greaves v/s The Workers

It was held that the workers will be entitled to wages for the strike period when the strike is legal as well as justified.

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<sup>20</sup> AIR 1978 SC 1489

A strike is legal if it does not violate any provisions of the Act. A strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable.

In a case a question was raised “whether the employer can dismiss a workman for joining a strike which is not illegal but unjustified”. It was held that the right to strike is recognized by implication. A strike may be unjustified for many reasons, for example:-

- a) demands may be unreasonable,
- b) demands may be made with extraneous motives,
- c) steps taken by employer to redress the alleged grievances though negotiation or conciliation.

The strike does not put an end to the employer-employee relationship and an employer cannot discharge a workman for a mere participation in a strike which is not illegal.

Bank of India v/s T. S. Kelewala<sup>21</sup>

The supreme Court held that where the contract or standing orders or the service rules/regulations are silent on the issue of workers’ entitlement to wages during the strike period, the management has the power to deduct wages for absence of duty when the absence is concerted action on the part of the employees and the absence is not disputed, irrespective of the fact whether the strike was legal or illegal.

If the strike is illegal, the workmen are not entitled to wages or compensation and they are also liable to punishment by way of discharge or dismissal.

The Supreme Court in the case of India General Navigation and Railway Co. Ltd., and Anr. v/s Their Workmen<sup>22</sup> observed, “It is difficult to understand how a strike in respect of a public utility service, which is clearly illegal, could at the same time be justified. These two conclusions cannot in law exist, the law has not made any distinction between an illegal strike which may be said to be justified and one is not justifiable”.

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<sup>21</sup> (1990) 4 SCC 744

<sup>22</sup> AIR 1960 SC 219

It was further observed by the Supreme Court that in case of an illegal strike the only question of practical importance would be the quantum of punishment. To decide the quantum of punishment a clear distinction has to be made between violent strikers and peaceful strikers.

- (1) Violent strikers are those who obstruct the loyal workmen from carrying on the work or take part in violent demonstrations and act in defiance of law and order;
- (2) Peaceful strikers are those workmen who are silent participants in the strike.

The first category of strikers is to be dealt with more severely and the punishment of dismissal, discharge or termination has to be imposed upon them. It would neither be in the interest of industry nor the workmen to effect wholesale dismissal of all striking workmen.

Chandramalai Estate Ernakulam v/s Its Workmen<sup>23</sup>

Held: Strike is the last weapon. There may, however, be the circumstances where the demand is of such urgent nature that it cannot be reasonably expected from the workmen to wait till after asking the Government to make a reference; in such a case the strike even before such request has been made will be justified.

Swadeshi Industries Ltd. v/s Their Workmen<sup>24</sup>

Held: Strike for securing improvement on matters relating to wages, dearness allowance, bonus, provident fund, gratuity, leave and holiday may prima facie be considered to be justified because it is the primary object of a Trade Union to secure better conditions of employment of the workmen.

Syndicate Bank v/s Umesh Nayak etc.<sup>25</sup>

When there is a machinery for settlement of disputes but employees or employers resort to strike or lock-out without having recourse to the prescribed means, strike or lock-out is unjustified and when there is a breach

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<sup>23</sup> (1960) II LLJ 243

<sup>24</sup> (1960) II LLJ 78 (SC)

<sup>25</sup> (1994) II LLJ 836 (SC)

of rules, it would be illegal. Therefore, the strike or lock-out as a weapon has to be used sparingly for redressal of urgent and pressing grievance when either no means are available or the available means have failed. The justness or otherwise of the action of the employer or employees has, therefore, to be examined on the anvil of the interest of the society which action tends to affect.

Iron and Metal Traders Pvt. Ltd., Bombay v/s M.S. Haskiel & Others<sup>26</sup>

Many strikers were instated but the respondents were singled out by the management for drastic treatment. The Tribunal found the action of the employer as discriminatory and therefore ordered reinstatement of three workers and awarded compensation to seven in lieu of reinstatement. The management filed appeal to the Supreme Court and the Supreme Court held the approach of the Tribunal to be fair, just and unreasonable.

It must also be noted that whenever an action of forfeiture is taken against an employee on the ground that he participated in an illegal strike and absented himself from duty it is necessary that he should be given an opportunity of being heard. Without observing the principle of natural justice no action of forfeiture should be taken.

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<sup>26</sup> (1983) 11 LLJ 504 (SC)

➤ Impact of Illegal Strike & Illegal Lock-out:-

1. Wages during illegal strike: - The effect of an illegal strike is that the workmen cannot claim wages for the period during which an illegal strike continues. It is pointed out that if the strike is legal the workmen are entitled to wages. A strike is legal or illegal, justified or unjustified is question of fact which is to be judged in the light of the fact which is to be judged in the light of the facts and circumstances of each case. It has been held by the Supreme Court<sup>27</sup> that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified.

M/s Crompton Greaves v/s The Workers

The Supreme Court has observed that it is well settled that in order to entitle the workmen to wages for the period of the strike, the strike should be legal as well as justified.

A strike is legal if it does not violate any provision of the statute. Again a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. It is also well settled that the use of force or violence or acts of sabotage resorted by the workmen during a strike disentitles them to wages for the strike period.

Syndicate Bank v/s Umesh Nayak<sup>28</sup>

Whether strike is legal and justified this question is to be determined by the adjudication under the Act. Primarily High Court is not the forum for getting findings on the issues regarding justifiability and legality of strike.

2. Trade Union Immunities and illegal strikes: - The illegality or unjustifiability or unreasonableness of the strike will not deprive the labour union of its immunities granted by the Trade Union Act as was clearly held in Rohtas Industries Ltd., v/s Rohtas Industries Staff Union.<sup>29</sup>

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<sup>27</sup> Canara Bank v/s Jambunath, AIR 1995 SC 319

<sup>28</sup> AIR 1995 SC 319

<sup>29</sup> AIR 1976 SC 425

3. Whether workers are entitled to wages during illegal lock-out: - In Krishna Sugar Mills v/s State of U.P., this question was discussed. The mill was closed for two days consequent to the alleged assault of officers by some workmen who created a panicky situation. The Tribunal held that the closure was lock-out which was illegal and unjustified and so workers are entitled to wages during the lock-out period. The matter was agitated before the High Court which held that the lock-out may be sometimes not at all connected with economic demands; it may be resorted to as a security measure. In this case such a lock-out was declared without giving notice as was required and that it was unjustified also being a retaliatory measure. So the company was liable to pay wages during the lock-out period.
  
4. Can the employer dispense with the service of workers consequent to a strike: - The employer-employee relationship is not terminated by participation in strike or by declaration of lock-out. The purpose of strike is to redress the legitimate grievance of the strikers. This right is recognized by the law and the violation of this right cannot put an end to the contract of employment by any unilateral process.
  
5. Disciplinary action against striking workmen: - Normally participation in illegal strike amounts to misconduct on the part of the workmen for which even punishment of dismissal can be given. In Model Mills Ltd., v/s Dhermodas, the Supreme Court upheld the right of employer to dismiss from services the workmen participating in illegal strike under the provisions of the standing orders of the company.

➤ Conclusion:

Though under the Constitution of India, the right to strike is not a fundamental right as such, it is open to a citizen to go on strike or withhold his labour. It is a legitimate weapon in the matter of industrial relations.

In both lock-out and strike, a labour controversy exists which is deemed intolerable by one of the parties, but lock-out indicates that the employers rather than the employees have brought the matter in issue.

Strike may be justified or unjustified, legal or illegal. It depends on the circumstances of each case. It is usually associated with collective bargaining by workers and is permissible under Industrial dispute Act, 1947.

Lock-out is a weapon of coercion in the hands of the employer with a motive to coerce the workmen which is due to an industrial dispute and continues during the period of dispute.

However strikes and lock-outs are prohibited during the pendency of conciliation adjudication and arbitration proceedings.

Strikes are said to be revolutionary as it seeks to obtain better living conditions for the workers who form the majority in the industrial community. Better wages, better homes and healthy living condition better education—these are the healthy objectives for the attainment of which labour resorts to strikes. Hence, strikes may justly be described as contributing towards a revolutionary process in man's progress towards social order.

'Lock-outs', on the contrary, are reactionary by any measures; because their object is to frustrate this progressive trend in human affairs. To hold down wages to a minimum, workers denied of equal opportunities for the education of their children, and no savings to fall back upon in evil times, is surely unjustifiable, and may be rightly called reactionary.

A strike signals the transfer of power from the employer to the union. While the employer has a right to employ and retrench workers, in the case of a strike, the right to not come to the place of work is with the union. This transfer of right also means higher bargaining power for the union. A strike is also used by the union to unite its

members and send a strong signal to the management. In this case, strike also becomes an effective tool for the union to regain any lost support among the workers.

A lockout declared because of the poor financial condition of the company has an obvious advantage for the employer because it lets him cut his financial losses. During this period, an employer does not have to pay the labour costs and other variable costs.

However A lockout is the last step an employer would take. This is because a lockout means loss of production, which in turn means financial losses for the company. So except it is a case of financial distress, the employer would like to continue working.

A lockout also means deterioration in the relationship between the employer and the union/workmen. If the workmen decide to contest the reasons on which the employer has declared a lockout, there are chances that the employer might have to end up paying wages for the period of lockout along with other benefits which will have a huge financial implication on the company.

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