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Trade Unions and the Law of Strikes in India

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ABSTRACT

The contribution of the capital and labor in any industry is equally important. The prosperity of an industry depends upon the co-operation of its two components –the capital and the labor. As disputes between the capital and labor are inevitable so the object of any industrial legislation is to ensure smooth relationship between the two and to strive for settlement of any dispute by resorting to negotiation and conciliation. The importance of the Trade Union lies in the fact that they encourage such collective bargaining as ensures better terms and conditions between employer and employees. In their endeavor to secure better working conditions, privileges and amenities to the labor, the Trade Unions adopt certain methods, namely, legislation, collective bargaining, mutual insurance, and Strike.

KEYWORDS : Trade unions, Industry, Collective bargaining, Employer, Labor, Strike.

Introduction:

The right to strike has also been recognized in all democratic societies. Reasonable restrain use of this right is also recognized. Similarly the employers also have the freedom to use the weapon of lock – out in case workers fail to follow the rules of contract of employment. The degree of freedom granted for its exercise varies according to the social, economic and political variants in the system for safe guarding the public interest, the resort to strike or lock – out and in some cases the duration of either subject to rules and regulations or voluntarily agreed to by the parties or statutorily imposed this has been criterion underline the earlier legislation for regulating industrial relations in the country. The strikes and lock – outs are useful and powerful weapons in the armory of workmen and employers and are available when a dispute are struggle arises between them. Threats of their use even more than their actually use, influence the course of the contest. The threat is often explicit much more often tacit but not for that reason less effective.

Trade unions and employers will have to use very skillfully these weapons strike and lock – out by way of threatening or actual may help one party to force the other to accept the demands, or at least to concede something to them. But reckless use of this weapon creates the risk of unnecessary stoppages. The stoppages hurt both parties badly create worse tensions and frictions and violations of law and order and above all, from the public point of view they retard the Nation's Economic Development. A strike could be defined as a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment. In English law, there is no comprehensive legal definition of strike or industrial action. Perhaps the closet we come to is Lord Denning's attempt in Court of Appeal in 1975, when he said that "a concerted stoppage of work by men done with a view of improving their wages or conditions, or giving vent to a grievance or making a protest about something or other, or supporting or sympathizing with other workmen in such an endeavor". Strikes are, in other words, weapons in the hand of the workers and their organizations to promote and protect their economic, occupational and social interests in the broad sense of the term.

Right to strike, constitution of India:

With the constitution coming into force there was an attempt made to bring in the theory of a concomitant right, as was inferred in Romesh Thapar's case to infer the right to strike within the confines of Article 19(1) (c) of the Indian Constitution. In the case of All India Bank Employee's Association vs. National Industrial Tribunal and others held as follows:

The right guaranteed by Art 19(1) (c) of the Constitution of India does not carry with it concomitant right that unions formed for the protection of the interests of labor shall achieve their object such that any interference to such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) of the Indian Constitution as being in the interest of public order or morality. The right under Article 19(1)(c) extends o to the formation of an association or union concerned or as regards the steps which the union might take to achieve its object, they are subject to such laws and such laws cannot be tested under Article 19(4) of Indian Constitution.

In another case B.R. Singh vs. Union of India, justice Ahmadi was of the view that the right to strike cannot be equated to that of a fundamental one. "Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g. Go-slow, sit in, work to rule, absenteeism, etc and work. Strike is one such mode of demonstration by the workers for their rights. The right to demonstrate and therefore the right to strike is an important weapon in the armory of the workers. The right has been recognized by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognized as a mode of redress for resolving the grievances of the workers. But the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed under it".

In the case of Communist Party of India (M) Vs. Bharat Kumar and others, the Supreme Court adjudicating on the legality of strikes held that the "Fundamental rights of the people as a whole cannot be subservient to claim of an individual or only a section of the people".

Two sections of the society namely lawyers and government servants come under the scrutiny of the Supreme Court. In the case of Ex-captain Harish Uppal vs. Union of India and another, the court held that lawyers have no right to go on strike or give a call for boycott and even they cannot go on a token strike. The Apex Court further opined that strike as a weapon in any field does more harm than any justice.

Right to strike by Government servants and employees:

Whether the government servants and employees are having the right to go on strike was debated since long period. The dispute came before the Supreme Court of India in the case of T.K. Rangarajan vs. State of Tamilnaduthis case deals with the action of Tamilnadu Government, whereby it had terminated the services of all employees who had resorted to strike for the fulfillment of their demands. The said decision was challenged before the High Court of Madras by filing writ. Learned single judge by interim order, inter alia, directed the State Government that suspension and dismissal of employees without conducting enquiry be kept in abeyance until further orders and such employees be directed to resume duty. That interim order was challenged by the State Government of Tamilnadu by filing writ appeals. On behalf of the Government Employees, writ petitions were filed challenging the validity of the Tamilnadu Essential Services Maintenance Act, 2002 and also the Tamilnadu Ordinance No.3 of 2003.

The Division Bench of the High Court set aside the interim order and arrived at the conclusion without exhausting alternative remedy of

approaching Administrative Tribunal, writ petitions were not maintainable. The petitioners came up on appeal against the said order and for the same reliefs; writ petitions under Article 32 of the Indian Constitution the petitioner approached the Supreme Court.

In the above case the Court set about to answer two important questions namely:

(a) Is there a fundamental right to go on strike?
(b) In the instant case, do the employees have a statutory right to go on strike?

(a) Is there a fundamental right to go on strike?

The Apex Court in the process of answering the same referred the judgments of previous cases of Kames war Prasad and others Vs. State of Bihar and another wherein the Supreme Court held that there exist no fundamental rights to strike.

The Supreme Court quoted another judgment in the case of Radhey Sham Sharma Vs. The Post Master General, Central Circle Nagpur. The fact of the case that the employees of the Telegraph Department of the Government went on strike from the midnight of July 11, 1960, throughout India and the petitioner was on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed on him. The same was challenged before the Honorable Court. In that context it was contended that Sec.3,4 and 5 of Essential Service Maintenance Ordinance No.1 of 1960 were violative of Fundamental Rights guaranteed by clauses (a) and (b) of 19 (1) of the Indian Constitution.

The court considered the said ordinance and held that Sections 3, 4 and 5 of the ordinance did not violate Fundamental Rights enshrined in Art 19(1)(a) and (b) of the Constitution of India. The Supreme Court of India relied on the decisions of Ex-Capt. Harish Uppal vs Union of India and Communist Party of India (M) vs Bharat Kumar and others in coming to the conclusion that there is no fundamental right to strike.

(b) In the instant case, do the employees have a statutory right to go on strike?

The Supreme Court of India observes that there is no statutory provision empowering the employees to go on strike. Further it observes that there is prohibition to go on strikes under the Tamilnadu Government Servants Conduct Rules, 1973. Rule 22 provides that "no government servant shall engage himself in strike on incitements there to or in similar activities"The Hon'ble Supreme Court of India did not impose a blanket ban on all strikes. The court further declares that the said strike to be illegal in view of Rule 22 which prohibits government servants from going on strikes. Several decisions of the various High Courts in India as well as the Supreme Court itself have adverted to and positively affirmed the right to strike in so far as workmen are concerned.

Conclusion

The Trade Unions and the political parties of India have strongly contend that without right to strike, right to from association of Trade Union as guaranteed by the Constitution of India is an empty or paper right. With the impact of globalization, making the trade unions to come to a naught so far the bargaining is concerned. In some occasion the appeasement policy by the employers, suppressing the movement of Trade Unionism. The very existence of the Trade Union movement was in danger.

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