

## STRIKES BY GOVERNMENT EMPLOYEES



Law

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### ABSTRACT

*The total working force in our country, the Government directly or indirectly controls more than 2/3 of them and the strike by Government employees is not a new phenomenon. Tracing back the strikes by government employees from the beginning of this century, there was strike in 1903 in Madras Government press as a protest against the working of overtime without additional payment. In the year 1905, the workers of the Government of India press struck work for non-payment for Sundays and gazetted holidays. They demanded higher rate for the overtime work. In the year 1907 there was a strike in Samastipur Railway Workshop for the increase of wages. There were strikes in the railway workshops, mint and dock-yards during the year 1919 and in the year 1920 there were strikes by railway men, municipal employees and postal employees in Bombay. Between the years 1925 and 1930 there were a number of strikes on railways against wage cuts, retrenchment and against many other acts of discrimination and oppression by the railway administration.*

### Introduction

There have not been many strikes during the Second World War either in public or private sector because they were specifically prohibited under the Defense of India Rules. In the year 1946, all India postman & Lower Grade staff union launched a strike for an Increase in emoluments. The strike was a massive one which paralysed the work of post offices and railway mail services in many parts of the country. The other major strike during 1946 was that of primary Elementary School teachers in the United provinces in which over 40,000 teachers struck work for higher wages. In 1949 railway men went on strike. This strike was nothing but a communist party was against Nehru Government and because of the friction among the unions the strike did not meet with success. The Government took stern measures and about 600 workers lost their jobs for participating in the strike.

There was a strike even by the defense employees in 1952 against the retrenchment policy. The All India Port and Dock Workers Federation organised a token strike during November, 1953 and on June, 16, 1958 they went on a strike which ultimately led to a complete stoppage of work at the three major ports of Bombay, Calcutta and Madras. The public employees' right to strike is neither statutorily prohibited as in many other countries nor it is permitted as in the case of industrial employees. Strikes by the Government employees are rather handled by departmental conduct rules. Till 1957, there was no specific Banking Industry, even in the conduct rules, on the strike by Government employees. Strike, in the absence of any specific prohibition, however, was treated as an unauthorised absence from duty, which was subject to disciplinary action, by the authority concerned. A threat of strike in 1957 by the post and telegraph employees backed by the confederation of Central Government employees unions forced the Government to amend the Central Civil Services (conduct) Rules 1955, to prohibit the strike by Government employees. This was for the first time that specific restrictions on strike were imposed in the conduct rules.

In the case of *Meghraj v State of Rajasthan*<sup>2</sup> there was a strike by the employees of state owned hospital. The High Court of Rajasthan has observed that "Though a Government servant as a citizen may have a right to strike that would not take away the power of the Government to dismiss a Government servant for good or sufficient reasons. So far as administrative departments are concerned, it stands to reason that strike, for the purposes of demonstrating again some order of the Government is clearly an act of indiscipline and administration cannot be run properly if those who are serving the administration act in an indisciplined manner".

The Allahabad High Court in *Bencheylal v. State of U.P.*<sup>3</sup> held that stoppage of work by an individual by itself may be due to many reasons but when such action (strike) is taken. As a protest, in

an organized manner it may be regarded as a breach of discipline and violation of the conditions of service rules. Thus, even in the absence of any other penalty, the Government employees are subject to disciplinary action for engaging in strike, which may extend to his dismissal.

The Bihar Government introduced rule 4 A into the Bihar Government servants conduct rules 1956 and this was challenged on the ground that it interfered with the workers rights guaranteed by Article 19 (1) (a) (b) & (c) of the Constitution. The High Court of Patna has held that both, the right to strike and demonstration were not included in the right of free speech and the right to form association or union under Cls.(a) & (c) of Article 19 (1) of the Constitution, so far as Government employees were concerned.<sup>4</sup>

On appeal, the Supreme Court considered the constitutional validity of rule 4A and approved the power of the Government to prohibit absolutely Government employees from striking or put some restrictions on them or to impose any penalty on striking employees. The Supreme Court reviewed a number of American cases on this point such as *Expert Court is*<sup>5</sup> and *united public workers v. Mitchell*<sup>6</sup> which were relied by the State in Support of its position that Government servants formed a class and that the conditions of service' imposed. Upon them are reasonable and necessary to ensure efficiency and discipline and that they cannot be questioned on the ground of their contravening and constitutional guarantees. The result of the, decision in *Kameswhwar Prasad v. State of Bihar*<sup>7</sup> was that a civil service rule cannot impose blanket restriction on demonstrations but it can deny to the workers the right to strike for any purpose. A prohibition on strike does not mean that an employee cannot participate in other forms of agitation of protests even though connected with the strike. Thus, participation in a demonstration, though connected with the strike, would not amount to participation in strike. The court struck down that part of the rule 4A, which prohibited 'any form of demonstration' by the Government servants on the ground that demonstration, is a visible manifestation of the feelings or sentiments of an individual or a group. A communication of one's idea to other to whom it is intend to be conveyed, is in effect a form of speech and, expression which falls within the freedom guaranteed by article 19 (a) and 19 (1) (b) of the Constitution.

The Supreme Court in *Ghosh v. Jopseph*<sup>8</sup> had stated that the restriction on strikes under the civil service conduct rules would not extend to cover the cases of instigation and preparation for strike, unless specifically provided for. The rule 4A at the time of its inception was applicable to industrial workers employed by state owned or state; managed undertakings other than rail-

ways to which these conduct rules were applicable. On March 10, 1959 the Government of India amended the central civil service (conduct) Rules and exempted its non-gazetted industrial employees drawing a salary of Rs.500/- or less per month and working in Government owned or managed Industries and commercial establishments, other than railways, from the operation of rule 4A. In *Ram Rao v. Accountant General*,<sup>9</sup> the Bombay High Court rejected the contention of discrimination and held that the categories of Government servants who are taken out of the application of 4A are a defined class who are governed by its own rules. The mere fact that they are excluded from conduct rules cannot lead an inference that those who are within remaining class and are governed by conduct rules are discriminated against.

There is no such right as a legal right to strike for anyone in the Government employment. Whether a strike should be prohibited in one form or another according to the categories of employment in the Government service is a matter within the discrimination and powers the Government as an employer framing rules. Even for participating in a strike, prohibited under the Civil Service (conduct) Rules, a Government servant cannot be summarily dismissed. Procedure provided under Article 311 of the Constitution is required to be followed and the principles of natural justice are to be observed. Article 311 provides the following safeguards to civil servants against any arbitrary dismissal from their posts;

“No person holding a civil post under the Union or the States shall be dismissed or removed by any authority sub-ordinate to that by which he was appointed.

No such person shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges”.

The term civil post means an appointment, or office or employment on the civil side of the administration.<sup>10</sup> Article 311 applies to both temporary and permanent servants.

During an inquiry no materials should be relied on against an employee without his being given an opportunity of explaining them<sup>11</sup>. If the employer violates this in an inquiry, it is treated as unfair and violating the principles of natural justice and the reinstatement of the dismissed workers may be ordered.

Apart from the rule 4A introduced- in the conduct rules, the Government had at times promulgated special ordinance from time to time to declare strike by Government employees as illegal. Whenever the Government faced a serious threat of strike by its employees, the Government promulgated an ordinance under Article 123(1) deals with the ordinance making power of the President. Not only the Central Government, but the State Governments when they faced with a threat of strike by the State Government employees, promulgated similar ordinances.

Although the Central Government has prohibited strike by Government employees as per conduct rules, it has not defined strike. In December 1966, the Government clarified the meaning of 'strike' for the purpose of rule 7 of the conduct rules. It reads as follows:

'Strike' means refusal to work or stoppage or slowing down of work a group of employees acting in combination, and includes abstention from work without permission, refusal to work overtime where such overtime is necessary in public interest, and resort to practices or conduct which results or is likely to result in the cessation or substantial retardation of work in any

organisation, including go-slow, sit-down pen down, stay in, token, sympathetic or any other similar strike and absence from work for participation in a 'Bendh' or any similar movement”.

The Government thus intended to give a broader meaning to the term 'Strike' for the purposes of prohibition under the conduct rules.

The president of India for the first time promulgated the Essential Services Maintenance Ordinance on August, 7, 1957 to meet the challenge posed by the workmen of Posts & Telegraphs to go on 'strike'. Subsequently Central Government employees promulgated Ordinances in the years 1960, 1968 to meet the threat of strike. These ordinances made strike penal offence. The objective sought to be achieved by the ordinances was to provide for maintenance of » essential services and the normal life of the community, and to achieve that objective. It was necessary that the persons in the essential services who were threatening to jeopardize the maintenance of essential services and thereby dislocate the normal life of the community should be deterred from doing so.

The courts have held that having regard to the danger to be averted, the restrictions imposed by the ordinance were reasonable and imposed in interest of public order and hence Article 19 (4) of the Constitution has not been contravened.<sup>12</sup>

In spite of the promulgation of ordinances imposing on strike” with penal sanctions, it had a little impact. The failure on the part of the Government to enforce the law due to various political pressures, undermines the value of law and brings disrespect both for the law and the authority. The time has come to realize that strike by Government employees is basically a labour management problem and deserves a treatment of that nature although there is a close association of employees' unions with the political parties. The Trade Union movement among central Government employees has not as yet acquired homogeneity due to the politics sponsored and encouraged by the various political parties. In a strike by Government employees the employees or the Government do not seem to lose much but it is the general public that is put to great inconvenience and dislocation in normal civil life. The Essential Services Maintenance Act gave 'enabling powers' to the Government to declare any services essential and strike in that services A permanent statutory Ban on strike by the Government is not desirable. It is for the Government and all the others who are concerned to devote their energies in improving the labour-management relations in the Government employment and search for the effective alternatives, so that a need for strike may not arise. Employees of most of the State Governments have either struck or threatened to strike work a few days before the scheduled dates for conduct of elections. The state Government employees “resort to strikes mostly to grant reliefs on par with the central employees. This act by the State Government employees to resort to strike before elections is to bring pressure upon the Government and to yield to their demands. The timing to strike work seems to be quite opportune and to put the Governments in an uncomfortable position.

### Conclusion

India, under the federal set up the Central Government is responsible for the management of all India services, central services and other sub-ordinate services and the States for the State services. Organisationally and constitutionally it appears to be sound but strikes by state Government employees are primarily based on unsatisfactory services conditions and emoluments. There is an imperative need to maintain high level of efficiency and morale by the Government which, could be realised only when satisfactory service conditions are guaranteed. Further indiscipline among the services if not checked, and pre-

vented would itself be a threat to democracy. A potent cause for strikes has been the existence of disparity in emoluments between the Central and State Governments employees. No sooner a rise in emoluments is announced in the centre, then employees of all the State Governments expect a corresponding rise. It would be advantageous to set up a machinery to review periodically the personnel problems of centre and state employees and to recommend uniform policy in an integrated base. There arises a number of basic financial questions closely connected with the question of strikes as far as Government employees are concerned. The state Governments have been lenient when employees went on mass casual leave. The way the Governments handle the demands of Government employees is also a question to be answered. Generally in the beginning, the Government refuse to accept the demands and promptly ban the strike and issues a communique stating that the employees will be liable for disciplinary action. After protracted and delayed bargain-

ing, they partially accept the demands. Finally after cessation of strike, the action taken and the punishment imposed are usually withdrawn. This reflects an absence of clear policy in personnel matters with regard to "Government employees on the part of the Government. Strikes by state employees must be tackled on a national basis and not in an isolated manner. Unless an integrated policy is formulated and implemented by the states in dealing with the strikes there is an imminent threat of their employees going on sporadic strikes resulting in the administration being paralysed and the pace of planning and development disturbed. Nearly 60-70 percent of the workmen in the organised sector are employed in public utility services as defined under Section 2 (n) of the Industrial Disputes Act read with first schedule, be they Government Departments, local bodies or industries both public and private" sectors.

## REFERENCE

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