



THE LEGALITY OF STRIKE

Law

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ABSTRACT

Strikes are not per se illegal. The legality or illegality of a strike must depend on the means by it is enforced and on its objectives. Lord Shaw said in *Russel v Amal Society of Carpenters and Justice*.¹ "Strikes may be perfectly legal or they may be illegal. It depends on a nature and mode of constructed cessation of labour. If this concerted cessation is in breach of contract then it could not be said to be within law any more than could a breach of contract by a single workman. If on the other hand, a strike be cessation of labour on the expiring of contract. There is no necessary illegality there any more than in the case of an individual workmen completing their bargain and choosing to remain idle. But of course, in this later case, the concerted cessation of a labour may be for the sole of deliberate off obvious purpose of the refraining tread in which case different legal consequences might ensure.

The strike is justified However, merely refusal to recognise a particular trade union or to negotiate with it as a recognised union, will not by itself justify strikes. When there is a bonfide dispute about the conditions on which recognition should be granted when the management refuses to agree to arbitration or adjudication of demands of the workmen, the strike is justified. Even in some demands are not referred to adjudication or arbitration, the workers are justified to go on strike. When the workers were forced to resort to strike because of various acts of management and more essentially the placing the number of workmen under the contractors and retrenchment of a large body of a workmen the strike is not justified. If the existing service facilities are withdrawn, the strike started consequent on such abrupt discontinuation of benefits, is quire justified. The strike against contract in force is not justified.

The strike itself cannot be treated as misconduct. The employer cannot dismiss an employee forgoing on justified strike because in that case the recognised weapon of strike will be rendered ineffective. Even in case legal, but unjustified strike, the employer cannot given right to dismiss employees. The power to dismiss depends upon the reasonableness of the demands will, therefore, restrict the field of industrial bargaining. In case of *Ram Kishan Iron Foundry, Howrah v their workmen*². It was held when the strike is resorted to with the real object of compelling the employer to reopen a demand settled by adjudication or when it is reported to frivolously and frequently with a dominant motive of running the industry or when it is on the account of extraneous considerations, then there will be misconduct and the employer will have the right to dismiss the employees.

It Express Newspapers Ltd., v Mchale Mark,³ it was held that a strike, legal or illegal, justified, unjustified does not dissolve the employer employee relationship. The strikers can be dismissed or discharged only if the strike was not bonafide and when it is a misconduct. The doctrine of replacement was first raised in 1952 in the case of *Spencer and Company v their workmen*,⁴ and confirmed on appeal. In the *Spencer* case the Madras Industrial Tribunal held vis a vis American decisions that an unjustified strike not caused by unfair labour practices of equivalent to an economic strike, and hence the workers could be replaced and upon settlement of the strike refused reinstatement. However, the other case of *'Bangalore Silk Throwing Factory v Its Workmen*⁵, Bombay Appellate Tribunal held that the dismissal of workers was against natural justice and further stated the management had the right in law to fill up their places and 'The management are bound only to reinstate such strikers whose places have not been filled'

As regards the wages, during the period of strike in the case of legal and justified strike, and more specially against in the unfair labour practices of the employer, the workers are entitled for wages for the striking period. In contract to the practice in America wages during the existing period was real issue. In India thus, the period was allowed because of economic conditions of workers and tribunal are held that denial of wages is tant amount to a denial of the right to strike. If the deductions of wages are allowed to be made in the circumstances of the present case, it would amount to denying to workmen to workmen the management which they have acquired after a great deal of struggle and sacrificed. But however the workers who are not reinstated were entitled compensation. In spite of temporary employees also have the right to reinstate in the case of legal and justice.

KEYWORDS

Illegal Strike:

All strikes are not ipso facto unlawful or illegal. Industrial Disputes Act, 1947 however, makes certain strikes illegal under section 24. This section specifies the events on the happening of which, strike is to be treated as illegal and the plain meaning of this is that, those strikes which do not fall in that category are not illegal, another way strike may be unjustifiable, but it is not illegal unless it is illegal according to the provision of the Industrial Disputes Act, 1947. Thus a strike which is not illegal under Section 24 of the Industrial Disputes Act, 1947 can never be treated as illegal under the Act.

For instance, where a strike in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an Arbitrator, a Labour Court, Tribunal of National Tribunal, the continuance of such strike will not be illegal, if, such strike was not at its commencement in contravention of the provisions of this Act or the continuance thereof, was not prohibited under sub-section (3) of Section 10 or sub-section (4A) of Section 10A of Industrial Disputes Act, 1947.⁶ Also, a strike declared in consequence of an illegal lockout will not be illegal.

The Supreme Court has stated A strike is a legitimate weapon in the hand of the workers to redress their grievances. However it has been held that it should be used as a "last resort" when all other avenues. Have proved futile and so long as it is used in a restrained, peaceful

manner of good and justifiable reasons, it can not be punished.⁷ In U.K. strikes may or mayn't involve breaches of contracts of employment. For many years, the traditional view was that a strike after a strike notice of duration not less than that services, are specified in Section 2(1)(a) of the Act. In U.K., peacetime Emergency powers⁸ sought to secure the essentials of life to the community and prohibited strikes in public utilities by empowering the Government to declare a state of emergency. The industrial disputes which are of a grave and serious character by establishing that the Secretary of State in certain circumstances may apply to the Industrial Court for an order restraining persons from organising industrial action for upto 60 days⁹. The other procedure available in the same type of emergency situation is a ballot, that is the Secretary of State may apply for a ballot when the situation is that the conditions appear to be, or likely to be seriously injurious to the livelihood of a substantial number of workers employed in a particular industry.¹⁰ Now, the Trade Union and Labour Relations Act of 1974, has also abolished the Emergency measures of 1971 statute.

Turning to Australia, in the case of a proclamation made of the existence of a serious industrial disturbance prejudicial or threatening trade or commerce with other countries or among the States, the participation in or incitement to strike in relation to (1) employment connected with the transport of goods or the conveyance of passengers in overseas or inter-state trade or commerce or (2) employment in or in

connection with the provision of any public service by the Commonwealth Government or any Commonwealth public authority, is an offence.¹¹

In Australia, a strike may take place without notice being given to the employer concerned or to an arbitration authority or alternatively after the expiration of a period of notice. Again, a strike in which unionists are concerned may have been decided up on by the particular employees concerned or by an official of the union or by all the members of union.¹² These are variation in the methods of striking and they are a significant feature of strike legislation under some of the Arbitration Acts. In Queensland, and New South Wales, where all strikes are not made illegal the Acts distinguish between strike action that is taken in accordance with a majority decision of the member if the union concerned after a secret Ballot and strike action decided up on in some other manner.¹³

1. (1910)IKBP 506
2. 1949 LLJ 796
3. (1960)KK LLJ 243- 246
4. 1953 ILLJ LAT (Cal) 49at 52
5. 1960 AIR SC 1250
6. 1955 ILLJ (566L.T)561
7. (1961)H FLR IT Cal CUTTA 10
8. (1954 LLJ LAT 374
9. 1952ILLJSC 226
10. 1957 LLJ LAT Bombay 435
11. 1952 ILLJ465
12. Section 24 2 Industrial Disputes Act
13. Cal Tax India Ltd vs. Certain Workers 1954 LLJ 516 52

Section 51(I) of Queensland Act Section 99 of New South

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