Supreme Court of India
Bank Of India vs T.S. Kelawala And Ors.Withs.U. ... on 4 May, 1990
Equivalent citations: 1990 SCR (3) 214, 1990 SCC (4) 744
Author: P Sawant
Bench: Sawant, P.B.

PETITIONER:
BANK OF INDIA

Vs.

RESPONDENT:
T.S. KELAWALA AND ORS.WITHS.U. MOTORS PRIVATE LTD.V.THE WORK

DATE OF JUDGMENT04/05/1990

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
KULDIP SINGH (J)

CITATION:
1990 SCR (3) 214 1990 SCC (4) 744
JT 1990 (2) 339 1990 SCALE (1)140

ACT:
Payment of Wages Act, 1936: Sections 7(2) and 9--Absence from work or indulging in go-slow tactics--Pro-rata deduction/non-payment of wages by employer--Whether justified.

HEADNOTE:
In the former appeal, the appellant is a nationalised Bank. In 1977, some demands for wage revision made by the employees of all Banks were pending and in support of their demands, a call for a country wide strike was given. The appellant-Bank issued a Circular on September 23, 1977 to its managers and agents directing them to deduct wages of the employees for the days they go on strike. The respondent Unions gave a car for a four hour strike on December 29, 1977. Two days before the strike, the appellant-Bank issued an Administrative Circular warning the employees that if they participate in the strike, they would be committing a breach of their contract of service and they would not be entitled to salary for the full day and they need not report for work for the rest of the working hours on that day. However, the employees went on strike as scheduled, for four hours which included banking hours of the public, and resumed duty thereafter. The appellant-Bank did not prevent them from doing so. The appellant Bank by its circular di-

rected the managers and agents to deduct the full day's salary of those employees who participated in the strike. On a writ petition filed by the respondents, the High Court quashed the said Circular. The Letters Patent Appeal filed by the appellant was dismissed. Hence, the appeal by the Bank.

In the latter appeal, the appellant is a company whose workers had indulged in "go-slow" in July 1984, thereby bringing down production. The workers did not attend to their work and were loitering in the premises and were indulging in go-slow tactics to pressurise the
215
company to concede their demands. The company suspended its operation by giving a notice of lock out. It did not pay wages to the workers for July , 1984 on the ground that they did not work during all the working hours and had not their wags. The workers' union filed a complaint before the Industrial Court complaining that the appellant company had indulged in unfair labour practice and that the lock-out declared was illegal- The Industrial Court held that the deduction of wages for July, 1984 on account of the go-slow was not justified- It also declared that the company had committed an unfair labour practice by not paying full monthly wages to the workers and directed the company to pay the said wages for the month of July, 1984. Aggrieved, the appellant company has preferred the appeal.

Allowing the appeals, this Court,

HELD: 1.1 There is no doubt that whenever a worker indulges in a misconduct such as a deliberate refusal to work, the employer can take disciplinary action against him and impose on him the penalty prescribed for it which may include some deduction from his wages. However, when misconduct is not disputed but is, on the other band, ' 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 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. 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 hi 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
216
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. In fact, the direction was to the contrary. Hence, the later resumption of work by the employees was not in fulfilment of the contract of service or any obligation under it. The Bank was therefore not liable to pay either full day's salary or even the pro rata salary for the hours or work that the employees remained in the Bank premises without doing any work. It is not a mere presence of the workmen at the place of work but the work that they do according to the terms of the contract which constitutes the fulfilment of the contract of employment and for which they were entitled to be paid. [222E-H; 223A-F]

1.2 Although the service regulations do not provide for a situation where employees on a mass scale resort to absence from duty for whole day or a part of the day whether during crucial hours or otherwise they do provide for treating an absence from duty of an individual employee as a misconduct and for taking appropriate action against him for such absence. [224D-E]

2.1. When the contract, Standing Orders, or the service rules/ regulations are silent, but enactment 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 enactment. [231F]

2.2. The working class has indisputably earned the right to strike as an industrial action after a long struggle, so much so that the relevant industrial legislation recognises it as their implied right. However, the legislation also circumscribes this right by prescribing conditions under which alone its exercise may become legal. Whereas, therefore, a legal strike may not invite disciplinary proceedings, an illegal strike may do so, it being a misconduct. However, whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. The liability to lose wages does not either make the strike illegal as a weapon or deprive the workers of it. When workers resort to it, they do so knowing full well its consequences. During the period of strike the contract of employment continues but the workers withhold their labour. Consequently, they cannot expect to be paid. [232C-E]

2.3. The contract, which is this case is monthly, cannot be subdivided into days and hours. If the contract comes to

an end amidst a month by death, resignation or retirement of the employee, he would not be entitled to the proportionate payment for the part of the month

217

he served. If the employment-contract is held indivisible, it will be so for both the parties. There is no difficulty, inequity or impracticability in construing the contract as divisible into different periods such as days and hours for proportionate reimbursement or deduction of wages, which is normally done in practice. [232G-H; 233A]

2.4. The contract of employment, Standing Orders or the service rules provide for disciplinary proceedings for the lapse on the part of a particular individual or individuals when the misconduct is disputed. As things stand today, they do not provide a remedy for mass-misconduct which is admitted or cannot be disputed. Hence, to drive the management to hold disciplinary proceedings even in such cases is neither necessary nor proper. The service conditions are not expected to visualise and provide for all situations. When they are silent on unexpected eventualities, the management should be deemed to have the requisite power to deal with them consistent with law and the other service conditions and to the extent it is reasonably necessary to do so. The pro rata deduction of wages is not an unreasonable exercise of power on such occasions. Whether on such occasions, the wages are deductable at all and to what extent will, however, depend on the facts of each case. Although the employees may strike only for some hours but there is no work for the rest of the day as in the present case, the employer may be justified in deducting salary for the whole day. On the other hand, the employees may put in work after the strike hours and the employer may accept it or acquiense in it. In that case the employer may not be entitled to deduct wages at all or be entitled to deduct only for the hours of strike. If statutes such as the Payment of Wages Act or the State enactments like the Shops and Establishments Act apply, the employer ,may be justified in deducting wages under their provisions. Even if they do not apply, nothing prevents the employer from taking guidance from the legislative wisdom contained in it to adopt measures on the lines outlined therein, when the contract of employment is silent on the subject. [233B-F]

V.T. Khanzode & Ors. v. Reserve Bank of India & Anr., [1982] 3 SCR 411; Paluru Ramkrishnaiah & Ors. etc. v. Union of India & Anr. etc., [1989] 1 JT 595 and Senior Superintendent of Post Office & Ors. v. lzhar Hussain, [1989] 3 JT 411, relied on.

Buckingham and Carnatic Co. Ltd. v. Workers of the Buckingham and Carnatic Co. Ltd., [1953] SCR 219; V. Ganesan v. The State Bank of India & Ors., [1981] 1 LLJ 64; State Bank of India, Canara Bank, Central Bank etc. & Ors. v. Ganesan, Jambunathan, Venkatara-

218

man, B.V. Kamath, V.K. Krishnamurthy, etc. & Ors., [1989] 1 LLJ 109; Sukumar Bandyopadhyyay & Ors. v. State of West Bengal & Ors., [1976] IX LIC 1689; Algemene Bank Nederland, N.V. v. Central Government Labour Court, Calcutta & Ors., [1978] II LLJ, 117; V. Ramachandran v. Indian Bank, [1979] I LLJ 122; Dharam Singh Rajput & Ors. v. Bank of India, Bombay & Ors., [1979] 12 LIC 1079; R. Rajamanickam, for himself and on behalf of other Award Staff v. Indian Bank, [1981] II LLJ 367; R.N. Shenoy & Anr. etc. v. Central Bank of India & Ors. etc., [1984] XVII LIC 1493; Prakash Chandra Johari v. Indian Overseas Bank & Anr., [1986] II LLJ 496; Workmen of M/s. Firestone Tyre & Rubber Co. of India (P) Ltd. v. Firestone Tyre & Rubber Co., [1976] 3 SCR 369; Krishnatosh Das Gupta v. Union of India & Ors., [1980] 1 LLJ 42; Sant Ram Sharma v. State of Rajasthan & Anr., [1968] 1 SCR 111; Roshan Lal Tandon v. Union of India, [1968] 1 SCR 185; Secretary of State for Employment v. Associated Society of Locomotive Engineers and Firemen and Ors. (No. 2), [1972] 2 All ER 949; Miles v. Wakefield Metropolitan District Council, [1989] I LLJ 335 and Cutter v. Pwell, [1795] 6 TR 320, referred to.

3.1. There cannot be two opinions that go-slow is a serious misconduct being a covert and a more damaging breach of the contract of employment. It is an insidious method of undermining discipline and at the same time a crude device to defy the norms of work. It has been roundly condemned as an industrial action and has not been recognised as a legitimate weapon of the workmen to redress their grievances. In fact the model standing orders as well as the certified standing orders of most of the industrial establishments define it as a misconduct and provide for disciplinary action for it. Hence, once it is proved. those guilty of it have to face the consequences which may include deduction of wages and even dismissal from service. [237G-H; 238A]

3.2. The proof of go-slow, particularly when it is disputed, involves investigation into various aspects such as the nature of the process of production, the stages of production and their relative importance, the role of the workers engaged at each stage of production, the pre-production activities and the facilities for production and the activities of the workmen connected therewith and their effect on production, the factors hearing on the average production etc. The go-slow further may be indulged in by an individual workman or only some workmen either in one section or different sections or in one shift or both shifts affecting the output in varying degrees and to different extent depending upon the nature of product and the productive process. Even where it is admitted, go-slow may in some case present

219

difficulties in determining the actual or approximate loss, for it may have repercussions on production after the go-slow ceases which may be difficult to estimate. The deduc-

tion of wages for go-slow may, therefore, present difficulties which may not be easily resoluble. When, therefore, wages are sought to be deducted for breach of contract on account of go-slow, the quantum of deduction may become a bone of contention in most of the cases inevitably leading to an industrial dispute to he adjudicated by an independent machinery statutory or otherwise as the parties may resort to. The simplistic method of deducting uniform percentage of wages from the wages of all workmen calculated on the basis of the percentage fail in production compared to the normal or average production may not always be equitable. It is, therefore, necessary that in all cases where the factum of go-slow and/or the extent of the loss of production on account of it, is disputed, there should he a proper inquiry on charges which furnish particulars of the go-slow and the loss of production on that account. The rules of natural justice require it, and whether they have been followed or not will depend on the facts of each case. [238B-G]

3.3. In the instant case, there is a finding recorded by the Industrial Court that there was a go-slow resorted to by the workmen resulting in loss of production during the said period. Since the said finding is not challenged, it is not possible to interfere with it in this appeal. Though the appellant is justified in deducting wages for the said period, in the facts and circumstances of the case it is directed that it will not deduct more than 5 per cent of the wages of the workmen for the month of July, 1984 when they indulged in go-slow tactics. [239D-F]

M/s. Bharat Sugar Mills Ltd. v. Shri Jai Singh & Ors., [1962] 3 SCR 684; T.S. Kelwala & Ors. v. Bank of India & Ors., [1981] 43 FLR 341 and Apar (Pvt) Ltd. v.S.R. Samant & Ors., [1980] II LLJ 344, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2581 of 1986.

Appeal by Certificate from the Judgment and Order dated 15.10.1985 of the Bombay High Court in Appeal No. 547 of 1984.

WITH Civil Appeal No. 855 of 1987.

From the Judgment and Order dated 8.12.1986 of the Industrial Court, Maharashtra, Bombay in Complaint (ULP) No. 1202 of 1984.

Ashok Desai, Attorney General, G.B. Pai, J. Ramamurthy, Jitendra Sharma, B.N. Dutt, H.S. Parihar, Vipin Chandra, R.F. Nariman, P.H. Parekh, N.K. Sahu, Mrs. Urmila Sirur and Raj Birbal for the appearing parties.

The Judgment of the Court was delivered by SAWANT, J. These are two appeals involving a common question of law, viz., whether an employer has a right to deduct wages unilaterally and without holding an enquiry for the period the employees go on strike or resort to go-slow. In CA No. 2581 of 1986 we are concerned with the case of a strike while in the other appeal, it is a,case of a go-slow. By their very nature, the facts in the two appeals differ, though the principles of law involved and many of the au- thorities to be considered in both cases may be the same. For the sake of convenience, however, we propose to deal with each case separately to the extent of the distinction. Civil Appeal No. 2581 of 1986

2. The appellant in this case is a nationalised bank, and respondents 1 and 2 are its employees whereas respond- ents 3 and 4 are the Unions representing the employees of the Bank. It appears that some demands for wage-revision made by the employees of all the banks were pending at the relevant time, and in support of the said demands the All India Bank Employees' Association had given a call for a countrywide strike. The appellant-Bank issued a circular on September 23, 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. Respondents 3 and 4, i.e., the employees' Unions gave a call for a four-hours strike on December 29, 1977. Hence, the Bank on December 27, 1977 issued an Administrative Circular warning the employees that they would be committing a breach of their contract of service if they participated in the strike and that they would not be entitled to draw the salary for the full day if they did so, and consequently, they need not report for work for the rest of the working hours on that day. Notwithstand- ing it, the employees went on a four hours strike from the beginning of the working hours on 29th December 1977. There is no dispute that the banking-hours for the public covered the said four hours. The employees, however, resumed work on that day after the strike hours, and the Bank did not prevent them from doing so. On January 16, 1978, the Bank issued a Circular directing its managers and agents to deduct the full day's salary of those of the employees who had participated in the strike. The respondents filed a writ petition in the High Court for quashing the circular. The petition was allowed. The Bank preferred a Letters Patent Appeal in the High Court which also came to be dismissed. Hence, the present appeal.

The High Court has taken the view, firstly, that neither regulations nor awards nor settlements empowered the Bank to make the deductions, and secondly, in justice, equity and good conscience the Bank could not by the dictate of the impugned circular attempt to stifle the legitimate weapon given by the law to the workers to ventilate their griev- ances by resorting to strike. The High Court further took the view that since strikes and demonstrations were not banned in the country and despite the inconvenience that they may cause, they were recognised as a legitimate form of protest for the workers, the circular acted as a deterrent to the employees from resorting to a legally recognised mode of protest. According to the High Court, the circular even acted as an expedient to stifle the legitimate mode of protest allowed and recognised by law. The deduction of the wages for the day according to the Court amounted to unilat- erally changing the service conditions depriving the workers of their fixed monthly wages under the contract of service. The Court also reasoned that under the conditions of serv- ice, wages were paid not from day to day or hour to hour but as a fixed sum on a monthly basis. The contract between the Bank and the workers being not a divisible one, in the absence of a specific term in the regulations, awards and settlements, the Bank could not unilaterally reduce the monthly wage and thus give the employees lesser monthly wages than the

one contracted. The non-observance by the employees of the terms of the contract may give the employer a cause of action and a right to take appropriate remedy for the breach, but the employer was not entitled to deduct any part of the wages either on a pro rata basis or otherwise. The High Court further opined that the Bank was not without a remedy and the employees cannot hold the bank to ransom. The Bank could get the four-hours strike declared illegal by recourse to the machinery provided by law or put the erring workers under suspension for minor misconduct under Regula- tion 19.7, hold an enquiry and if found guilty, impose punishment of warning, censure, adverse remarks or stoppage of increment for not more than six months as prescribed by Regulation 19.8. The High Court also rejected the contention of the Bank that the Bank was entitled to make deductions under Section 7(2) of the Payment of Wages Act, 1936 by holding that the provision enabled the employer to deduct wages only if the Bank had power under the contract of employment.

4. The principal question involved in the case, accord- ing 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 work- place 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 griev- ances. 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.

5. It is necessary to clear yet another misconception. There is no doubt that whenever a worker indulges in a misconduct such as a deliberate refusal to work, the employ- er can take a disciplinary action against him and impose on him the penalty prescribed for it which may include some deduction from his wages. 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 be- cause on the facts, it is contended that although the em- ployees 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 imper- missible 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 threatended, 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 employ- ees 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. In fact, the direction was to the contrary. Hence, the later resumption of work by the employees was not in fulfilment of the con- tract of service or any obligation under it. The Bank was therefore not liable to pay either full day's salary or even the pro rata salary for the hours of work that the employees remained in the Bank premises without doing any work. It is not a mere presence of the workmen at the place of work but the work that they do according to the terms of the contract which constitutes the fulfilment of the contract of employ- ment and for which they are entitled to be paid.

6. It is also necessary to state that though, before the High Court, reliance was placed by the Bank on the provi- sions of Section 7(2)(b) read with Section 9 of the Payment of Wages Act, 1936 for a right to deduct the wages for absence from duty, there is nothing on record to show that the provisions of the said Act have been made applicable to the Bank. However, assuming that Act was applicable to the Bank, we are of the opinion that the relevant discussion of the High Court has missed the contentions urged by the Bank on the basis of the said provisions. What was urged by the Bank was that the said provisions enabled it to deduct wages for absence from duty. Hence, even if the Service rules/regula- tions were silent on the point, the Bank could legally deduct the wages under the said provisions. The High Court has reasoned that the power given by the said provisions come into play only when the employer has power to do so, probably meaning thereby, the power under the Service rules/regulations. We are unable to appreciate this reason- ing, which to say the least, begs the question. It is, therefore, necessary to point out that if the Act was ap- plicable, the Bank would certainly have had the power to deduct the wages under the said provisions in the absence of any service rule regulation to govern the situation.

7. Since the admitted position is that the service rules do not provide for such a situation, the question as stated earlier which requires to be answered in the present case, is whether there exists an implied right in the employer- Bank to take action as it has done. There is no dispute that although the service regulations do not provide for a situa- tion where employees on a mass scale resort to absence from duty for whole day or a part of the day whether during crucial hours or otherwise, they do provide for treating an absence from duty of an individual employee as a misconduct and for taking appropriate action against him for such absence. Since the High Court

has indicated a disciplinary action under the said provision even in the present circum- stances, we will also have to deal with that aspect. But before we do so, we may examine the relevant authorities cited at the Bar.

8. In Buckingham and Carnatic Co. Ltd. v. Workers of the Buckingham and Carnatic Co. Ltd., [1953] SCR 219 the facts were that on 1st November, 1948 the night-shift operatives of the carding and spinning department of the appellant- Mills stopped work, some at 4 p.m., some at 4.30 p.m. and some at 5 p.m. and the stoppage ended at 8 p.m. in both the departments, and at 10 p.m. the strike ended completely. The apparent cause for the strike was that the management of the Mills had expressed its inability to comply with the request of the workers to declare the forenoon of the 1st November, 1948 as a holiday for solar-eclipse. On 3rd November, 1948, the management put up a notice that the stoppage of work on the 1st November amounted to an illegal strike and a break in service within the meaning of the Factories Act and that the management had decided that the workers who had partici- pated in the said strike would not be entitled to holidays with pay as provided by the Act. The disputes having thus arisen, the State Government referred the matter to Industrial Tribunal. The Tribunal held that the workers had resorted to an illegal strike and upheld the view of the management that the continuity of service of the workers was broken by the interruption caused by the illegal strike and as a result the' workers were not entitled to annual holidays with pay under Section 49-B(1) of the Factories Act. The Tribunal, however, held that the total deprivation of leave with pay was a severe punishment and reduced the punishment by 50 per cent and held that the workers would be deprived of only half their holidays with pay. In the appeal before the then Labour Appellate Tribunal, the Tribunal held, among other things, that what happened on the night of the 1st November did not amount to a strike and did not cause any interrup- tion in the workers' service. The Tribunal observed that "It would be absurd to hold that non-permitted absence from work even for half an hour or less in the course of a working day would be regarded as interruption of service of a workman for the purpose of the said section (i.e., Section 49-B(1) of the Factories Act). We are inclined to hold that the stoppage of work for the period for about 2 to 4 hours in the circumstances of the ease is not to be regarded as a strike so as to amount to a break in the continuity of service of the workman concerned". In the result, the Tribu- nal allowed the Union's appeal and ordered that holidays at full rates as provided for in Section 49-A of the Factories Act will have to be calculated on the footing that there was no break in the continuity of service. This Court set aside the finding of the Appellate Tribunal by holding that it could not be disputed that there was a cessation of work by a body of persons employed in the Mills and that they were acting in combination and their refusal to go back to work was concerted, and the necessary ingredients of the defini- tion of "strike" in Section 2 (q) of the Industrial Disputes Act existed and it was not a ease of an individual worker's failure to turn up for work. Hence, it was an illegal strike because no notice had been given to the management, the Mills being a public utility industry.

In Secretary of State for Employment v. Associated Society of Locomotive Engineers and Firemen and Ors. (No.

2), [1977] 2 All ER 949, Lord Denning MR observed: "...It is equally the case when he is employed as one of many's to work in an undertaking which needs the service of all. If he, with the others, takes steps wilfully to disrupt the undertaking to produce chaos so that it will not run as it should. then

each one who is a party to those steps is guilty of a breach of his contract. It is no answer for any one of them to say 'I am only obeying the rule book', or 'I am not bound to-do more than a 40 hour week'. That would be all very well if done in good faith without any wilful disrup- tion of services; but what makes it wrong is the object with which it is done. There are many branches of our law when an act which would otherwise be lawful is rendered unlawful by the motive or object with which it is done. So here it is the wilful disruption which is the breach. It means that the work of each man goes for naught. It is made of no effect. I ask: is a man to be entitled to wages for his work when he, with others, is doing his best to make it useless? Surely not. Wages are to be paid for services rendered, not for producing deliberate chaos. The breach goes to the whole of the consideration, as was put by Lord Campbell CJ in Cuckson v. Stones, [1858] 1 E & E 248 at 255, (1983-60) All ER Rep 390 at 392 and with other cases quoted in Smith's Leading Cases (13th Edn., Vol. 2, p. 48), the notes to Cutter v. Power, [1795] 6 Term Rep 320, (1775-1802)All ER Rep 159)". In Miles v. Wakefield Metropolitan District Council, [1989] I LLJ 335 the facts were that the plaintiff, Miles was the Superintendent Registrar in the Wakefield Metropolitan District Council. His duties included performing marriages. As part of trade union action, he declined to perform mar- riages on Saturdays which day was very popular with marrying couples. However, on that day he performed his other duties. The Council, not wanting to terminate his services, imposed a cut in his remuneration. He sued the Council for payment but failed. He appealed to the Court of Appeal and was successful. The appellate court held that he was a statutory official and there was no contractual relation and the only action against him was dismissal. Aggrieved by this appel- late decision, the Council went before the House of-Lords in appeal. The House of Lords held that the salary payable to the plaintiff was not an honorarium for the mere tenure of office but had the character of remuneration for work done. If an employee refused to perform the full duties which could be required of him under his contract of service, the employer is entitled to refuse to accept any partial per- formance. In an action by an employee to recover his pay, it must be proved or admitted that the employee worked or was willing to work in accordance with the contract of employ- ment or that such service as was given by the employee, if falling short of. his contractual obligations was accepted by the employer as sufficient performance of the contract. In a contract of employment wages and work go together. The employer pays for the work and the worker works for his wages. If the employer declines to pay, the worker need not work. If the worker declines to work, the employer need not pay- In an action by a worker to recover his pay, he must allege and prove that he worked or was willing to work. In the instant case, the plaintiff disentitled himself to salary for Saturday morning because he declined to work on Saturday morning in accordance with his duty. Since the employee had offered only partial performance of his con- tract, the employer was entitled, without terminating the contract of employment, to decline partial performance, and in that case the employee would not be entitled to sue for his unwanted service.

In this connection, Lord Templeman stated as follows:

"The consequences of counsel's submissions demonstrate that his analysis of a contract of employment is deficient. It cannot be right that an employer should be compelled to pay something for nothing whether he dismisses or retains a worker. In a contract of employment wages and work go together. The employer pays for work and the worker works for his wages. If the employer declines to pay, the worker need not work. If the worker declines to work, the employer need not

pay. In an action by a worker to recover his pay he must allege and be ready to prove that he worked or was willing to work ..... "

It may be mentioned here that on the question whether the employee engaged in some kind of industrial action can claim wages on the basis of quantum meruit, only two of the Law Lords expressed themselves in favour, while the other three did not want to express any definite opinion on the question.

9. Among the decisions of the various High Courts relied upon by the parties in support of the respective cass, we find that except for the decision in V. Ganesan v. The State Bank of India & Ors., [1981] 1 LLJ 64 given by the learned Single Judge of the Madras High Court and the deci- sion of the Division Bench of the same Court in that matter and other matters decided together in State Bank of India, Canara Bank, Central Bank etc. & Ors. v. Ganesan,-Jambuna- than, Venkataraman, B.V. Kamath, V.K. Krishnamurthy, etc. & Ors., [1989] 1 LLJ 109, all other decisions, namely, (i) Sukumar Bandyo-

padhyyay & Ors. v. State of West Bengal & Ors., [1976] IXLIC 1689; (ii) Algemene Bank Nederland, N.V. v. Central Govern- ment Labour Court, Calcutta & Ors., [1978] II LLJ, 117;

(iii) V. Ramachandran v. Indian Bank, [1979] 1 LLJ 122; (iv) Dharam Singh Rajput & Ors. v. Bank of India, Bombay & Ors., [1979]12 LIC 1079; (v) R. Rajamanickam, for himself and on behalf of other Award Staff v. Indian Bank, [1981] II LLJ 367; (vi) R.N. Shenoy & Anr. etc. v. Central Bank of India & Ors. etc., [1984] XVII LIC 1493 and (vii) Prakash Chandra Johari v. Indian Overseas Bank & Anr. [1986] II LI J 496, have variously taken the view that it is not only permissi- ble for the employer to deduct wages for the hours or the days for which the employees are absent from duty but in cases such as the present, it is permissible to deduct wages for the whole day even if the absence is for a few hours. It is also held that the contract is not indivisible. Some of the decisions have also held that the deduction of wages can also be made under the provisions of the Payment of Wages Act and similar statutes where they are applicable. It is further held that deduction of wages in such cases is not a penalty but is in enforcement of the contract of employment and hence no disciplinary proceedings need precede it. Even in V. Ganesan v. The State Bank of India & Ors., (supra), it was not disputed on behalf of the employees that the employer, namely, the Bank had no fight to deduct pro rata the salary of the officers for the period of absence from duty. What was contended there was that the Bank was not entitled to deduct the salary for the whole three days on which the employees had staged a demonstration for a duration of 30 minutes during working hours on two days and for an hour, on the third day. The learned Judge held that by permitting the employees to perform their work during the rest of the day and by accepting such performance the bank must be deemed to have acquiesced in the breach of contract by the employees. It is on this fact that the learned Judge held that the right to deduct salary (obviously for the whole day) on the principle of "no work no pay" could be exercised only when there was a term in the contract or when there was a statutory provision to that effect. The Division Bench of the said Court in appeal against the said decision and similar other matters (supra) confirmed the reasoning of the learned Judge and held that in the absence of either a term in the contract of service stipulating that if an employee abstains from doing a particular work on a particu- lar day, he would not be entitled to emoluments for the whole

day or in the absence of a statutory provision laying down such a rule, it was impermissible for the employer to deduct or withhold the emoluments of the employees even for the hours during which they worked. Having accepted the performance of work from the employees for the rest of the day, the Banks are bound to compensate the employees for the work performed by them. In that very case, the Court also held, on the facts arising from the other matters before it, that the refusal to perform the clearing-house work can only be the subject matter of a disciplinary action and it cannot straightaway result in the withholding of the wages for the whole day. Non- signing of the attendance register and doing work is also work for which the employees should be compensated by pay- ment of remuneration.

10. On the specific question whether the management can take action in situations, where either the contract, Stand- ing Order or rules and regulations are silent, both parties relied on further authorities.

In Workmen of M/s. Firestone Tyre & Rubber Co. of India (P) Limited v. Firestone Tyre & Rubber Co., [1976] 3 SCR 369 on which reliance was placed on behalf of the workmen it was held that under the general law of master and servant, an employer may discharge an employee either temporarily or permanently but that cannot be without adequate notice. Mere refusal or inability to give employment to the workmen when he reports for duty, on one or more grounds mentioned in clause (kkk) of Section 2 of the Industrial Disputes Act is not a temporary discharge of the workmen. Such a power, therefore, must be found out from the terms of the contract of service or the Standing Orders governing the establish- ment- Hence, even for lay-off of the workmen there must be a power in the management either in the contract of service or the standing orders governing the establishment. Ordinarily, the workmen, therefore, would be entitled to their full wages when the workmen are laid off without there being any such power. There was no common law right to lay off the workmen, and, therefore, no right to deny the workmen their full wages.

In Krishnatosh Das Gupta v. Union of India & Ors., [1980] 1 LLJ 42, it was a case of the employees of the National Test House, Calcutta who had staged demonstration after signing the attendance register to register their protest against suspension of some of their colleagues. Though the employees signed the attendance register and attended the office, they did no work on the relevant day. As such, a circular was issued by the Joint Director inform- ing the employees that they would be considered as "not on duty". By a subsequent circular the same Joint Director notified to all departments concerned the decision of the Cabinet that there shall not be pay for no work. Relying on the said circular the Management of the National Test House effected on a mass-scale pay-cut from the pay and allowances of the concerned employees. The circular was challenged by the employees by a writ petition before the High Court. The High Court held that in order to deduct any amount from salary, there must be specific rules relating to the contract of service of the person concerned.

On behalf of the employers, reliance was placed on a decision of this Court in Sant Ram Sharma v. State of Rajas- than & Anr., [1968] 1 SCR 111 for the proposition laid down there.that in the absence of any statutory rules or a spe- cific provision in the rules, the Government can act by administrative instructions. The Court has held there that though it is true that the Government cannot amend or

super- sede statutory rules by administrative instructions, if the rules are silent on any particular point, Government can fill up the gaps and supplement the rules and issue instruc- tions not inconsistent with the rules already framed. In Roshan Lal Tandon v. Union of India, [1968] 1 SCR 185, this Court has stated that although the origin of Government service is contractual in the sense that there is an offer and acceptance in every case, once appointed to his post or office, the Government servant acquires a status, and his rights and obligations are no longer determined by consent of both parties but by statute or statutory rules which may be flamed or altered unilaterally by the Govern- ment. In other words, the legal position of the Government servant is more of status than of contract. The hallmark of status is the attachment to legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The relationship between the Government and the servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status.

In V.T. Khanzode & Ors. v. Reserve Bank of India & Anr., [1982] 3 SCR 411, this Court has reiterated that so long as Staff Regulations are not flamed, it is open to issue admin- istrative circulars regulating the service conditions in the exercise of power conferred by Section 7(2) of the Reserve Bank of India Act, 1934 so long as they do not impinge on any regulations made under Section 58 of the Act. The same view with regard to power to issue administra- tive instructions when rules are silent on a subject has been reiterated by the Court in Paluru Ramkrishnaiah & Ors. etc. v. Union of India & Anr. etc., [1989] 1 JT 595 and in Senior Superintendent of Post Office & Ors. v. Izhar Hussain, [1989] 3 JT 411.

11. The principles which emerge from the aforesaid authorities may now by 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 where 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.

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 employ- ees put in the allotted work but do not, for some reason--may be even as a protest--comply with the formali- ties 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.

When the contract, Standing Orders, or the service rules/regulations are silent, but enactment 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 enactment.

12. Apart from the aforesaid ratio of the decisions and the provisions of the Payment of Wages Act and similar statutes on the subject, according to us, the relevant provisions of the major legislation governing the industrial disputes, viz., the InduStrial Disputes Act, 1947 also lend their support to the view that the wages are payable pro rata for the work done and hence deductible for the work not done. Section 2 (rr) of the said Act defines "wages" to mean "all remuneration .... which would, if terms of employ- ment, expressed or implied, were fulfilled, be payable to workman in respect of his employment or work done in such employment ..." while Section 2(q) defines "strike" to mean "cessation of work" or "refus- al to continue to work or accept employment by workman". Reading the two definitions together, it is clear that wages are payable only if the contract of employment is fulfilled and not otherwise. Hence, when the workers do not put in the allotted work or refuse to do it, they would not be entitled to the wages proportionately.

13. The decisions including the one impugned in this appeal which have taken the view which is either contrary to or inconsistent with the above conclusions, have done so because they have proceeded on certain wrong presumptions. The first error, as we have pointed out at the outset, is to confuse the question of the legitimacy of the strike as a weapon in the workers' hands with that of the liability to lose wages for the period of strike. The working class has indisputably earned the right to strike as an industrial action after a long struggle, so much so that the relevant industrial legislation recognises it as their implied right. However, the legislation also circumscribes this right by prescribing conditions under which alone its exercise may become legal. Whereas, therefore, a legal strike may not invite disciplinary proceedings, an illegal strike may do so, it being a misconduct. However, whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. The liability to lose wages does not either make the strike illegal as a weapon or deprive the workers of it. When workers resort to it, they do so knowing full well its consequences. During the period of strike the contract of employment continues but the workers withhold their labour. Consequently, they cannot expect to be paid. The second fallacy from which the said decisions suffer is to view the contract of employment as an indivisible one in terms of the wageperiod. When it is argued that the wages cannot be deducted pro rata for the hours or for the day or days for which the workers are on strike because the con- tract, which in this case is monthly, cannot be subdivided into days and hours, what is forgotten is that, in that case if the contract comes to an end amidst a month by death, resignation or retirement of the employee, he would not be entitled to the proportionate payment for the part of the month he served. This was the iniquitous and harsh conse- quence of the rule of indivisibility of contract laid down in an English case, Cutter v. Powell, [1795] 6 TR 320 which was rightly vehemently criticised and later, fortunately not followed. If the employment-contract is held indivisible, it will be so for both the parties. We are also unable to see any difficulty, inequity or impracticability in construing the contract as divisible into different periods such as days and hours for proportionate reimburse- ment or deduction of wages, which is normally done in prac- tice.

The third fallacy was to equate disputed individual- conduct with admitted mass conduct. A disciplinary proceed- ing is neither necessary nor feasible in the latter case. The contract of employment, Standing Orders or the service rules provide for disciplinary proceedings for the lapse on the part of a particular individual or individuals when the misconduct is disputed. As things stand today; they do not provide a remedy for mass-misconduct which is admitted or cannot be

disputed. Hence, to drive the management to hold disciplinary proceedings even in such cases is neither necessary nor proper. The service conditions are not expect- ed to visualise and provide for all situations. Hence, when they are silent on unexpected eventualities, the management should be deemed to have the requisite power to deal with them consistent with law and the other service conditions and to the extent it is reasonably necessary to do so. The pro rata deduction of wages is not an unreasonable exercise of power on such occasions. Whether on such occasions the wages are deductible at all and to what extent will, howev- er, depend on the facts of each case. Although the employees may strike only for some hours but there is no work for the rest of the day as in the present case, the employer may be justified in deducting salary for tile whole day. On the other hand, the employees may put in work after the strike hours and the employer may accept it or acquiesce in it. In that case the employer may not be entitled to deduct wages at all or be entitled to deduct them only for the hours of strike. If further statutes such as the Payment of Wages Act or the State enactments like the Shops and Establishments Act apply, the employer may be justified in deducting wages under their provisions. Even if they do not apply, nothing prevents the employer from taking guidance from the legisla- tive wisdom contained in it to adopt measures on the lines outlined therein, when the contract of employment is relent on the subject.

14. It is, however, necessary to reiterate that even in cases such as the present one where action is resorted to on a mass scale, some employees may not be a party to the action and may have genuinely desired to discharge their duties but could not do so for failure of the management to give the necessary assistance or protection or on account of other circumstances. The management will not be justified in deducting wages of such employees without holding an in- quiry. That, however, was not the grievance of any of the employees in the present case, as pointed out earlier.

15. Hence, we are unable to sustain the impugned deci- sion which is untenable in law. The decision is accordingly set aside with no order as to costs.

Civil Appeal No. 855 of 1987

16. The facts in this case are different from those in the earlier appeal. In this case, the allegation of the employer Company is that the workers had indulged in "go- slow" and as a result there was negligible production in the month of July 1984. The workers did not attend to their duty and only loitered in the premises and indulged in go-slow tactics only with a view to pressurise the Company to con- cede demands. The Company was, therefore, compelled to suspend its operation by giving a notice of lock out. Ac- cording to the Company, therefore, since the workers had not worked during all the working hours, they had not earned their wages. Hence, the Company did not pay the workers their wages for the entire month of July 1984. The workers' Union, therefore, filed a complaint before the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act, for short) complaining that the Company had indulged in unfair labour practice mentioned in Item 9 of Schedule 4, from 7th August, 1984 which was the date for payment of salary for the month of July 1984, and under Item 6 of Schedule 2 of the Act with effect from 14th August, 1984 since the Company had declared a lock-out from that day. It was also alleged that since no specific date of the com- mencement of the alleged lock-out had been specified, it was an illegal one.

17. It appears that the Company had declared the lock- out by notice dated July 30, 1984 and the lock out was effected from August 14, 1984. Subsequently, there were negotiations between the Union and the Company, and a set- tlement was reached on October 15, 1984 as a result of which the lock out was lifted with effect from October 16, 1984. The terms of the settlement were formally reduced to writing on November 30, 1984.

18. In this appeal, we are not concerned with the lock- out and the subsequent settlement. The question that falls for consideration before us is whether the Company was justified in denying to the workers the full monthly wages for the month of July 1984. On this question, the Industrial Court accepted the oral testimony of the Company's witnesses that the workmen had not at all worked for full eight hours on any day in July 1984 and that they were working intermit-

tently only for some time and sitting idle during the rest of the day. On an average the workers had not worked for more than one hour and 15 to 20 minutes per day, during that month. The Industrial Court did not accept the evidence of the Union's witness that the witness and the other workmen had worked on all the days during the entire month of July 1984 because he admitted that after the Company told the workers that it could not concede to the demands, the work- ers had started staging demonstration. Although the witness denied that from July 3, 1984, the workers started indulging in go-slow, he admitted that the Company was displaying notices from time to time with effect from July 4, 1984 alleging that the workers were not giving production and that they were loitering here and there. According to the Industrial Court in the circumstances, it did not see any good reason to disbelieve the Company's witnesses. The Court further held that normally in view of this evidence on record, it would have held that the pro rata deduction of wages made by the Company for the month of July 1984 would not amount to an act of unfair labour practice falling under Item 9 of Schedule IV of the MRTU and PULP Act. However, in view of the two judgments of the Bombay High Court in T.S. Kelwala & Ors. v. Bank of India & Ors., [1981] 43 FLR 341 i.e. the one impugned in the earlier appeal and Apar (Pvt) Limited v.S.R. Samant & Ors., [1980] II LLJ 344, the Court had to hold that the non-payment of full wages to the work- men for the month of July 1984 was an act of unfair labour practice falling under the said provision of the Act. The Court further held that admittedly the workers were not piece-rated and there was no agreement or settlement allow- ing the Company to deduct wages on the ground that they were indulging in "go-slow" or that they had not given normal production. According to the Court, the remedy of the Compa- ny against the workmen may lie elsewhere. Thus, the Court taking sustenance from the Bombay High Court Judgments referred to above held that the deduction of wages during the month of July, 1984 on account of the go-slow was not justified, and declared that the Company had committed an unfair labour practice by not paying full monthly wages to the workmen, and directed the Company to pay the said wages for the month of July 1984. It is this order of the Indus- trial Court which is challenged directly in this Court by the present appeal.

19. Since one of the two decisions of the Bombay High Court on which the Industrial Court relied was rendered in another context and it has already been discussed in the other appeal, we may refer here only to the other decision, viz., Apar (Pvt) Ltd. v. S.R. Samant & Ors., (supra) which is pressed in service before us on behalf of the workmen. The facts in that case were that by a settlement dated Au-

gust 3, 1974 the workmen were allowed increase in the basis wages, dearness allowance, house rent, etc. in addition to the production bonus in terms of a scheme. That settlement was binding on the parties upto the end of April 1977. The matters ran a smooth course till August 1975. However, from September 1975, the Company refused to pay the production bonus and with effect from 15th October, 1975 it refused to pay the wages, dearness allowances etc. as per the settle- ment. On August 21, 1975, a notice was put up by the Company starting that because of the attitude of indiscipline on the part of the workers and deliberate go-slow tactics resulting in low production, the management was relieved of its com- mitments and obligation imposed upon it by the settlement. A notice in terms of Section 9A of the Industrial Disputes Act, 1947 was also put up indicating a certain scale of wages to which only the workers would be entitled. These wages were not more than the wages under the Minimum Wages Act and were even less than what was agreed to in the earli- er agreement of January 23, 1971. A complaint was, there- fore, filed under the MRTU & PULP Act before the Industrial Court, and the Industrial Court recorded a finding that the figures of production produced by the Company before it related only to few departments. Out of total of 700 employ- ees who were working earlier, 116 were retrenched at the relevant time. The Company's allotment of material, viz., aluminium was also reduced from 7390 metric tones to 2038 and there was no supply of even that allotted quantity. The Court further referred to certain inconsistent statements made by the factory-manager and held that the management had failed to discharge the burden of proof of justifying the drastic reduction of the wages and other emoluments. The Court therefore recorded a finding that the Company had engaged in an unfair labour practice. Against the said decision, the Company preferred a writ petition before the High Court. The High Court on these facts held that the wages could be deducted only in terms of a statutory provi- sion or of a settlement. A reduction of wages on the allega- tion that the workers in general had resorted to go-slow was wholly impermissible in law specially when the workmen were not piece-rated employees. The High Court referred to the cases where reduction of wages for absence from duty for striking work was held as valid such as Major Kanti Bose & Ors. v. Bank of India & Ors., (supra); V. Ramachandran v. Indian Bank, (supra) and Algemene Bank, Nederland v. Central Government Labour Court, Calcutta, (supra) and held that those cases were distinguishable because they related to absence from duty and not go-slow.

In M/s. Bharat Sugar Mills Ltd. v. Shri Jai Singh & Ors., [1962] 3 SCR 684 the facts were that certain workmen of the appel- lant-Mills resorted to "go-slow". The appellant-Mills held a domestic inquiry and as a result thereof decided to dismiss 21 workmen, and apply to the Industrial Tribunal under Section 33 of the Industrial Disputes Act for permission to dismiss the workmen. Evidence was laid before the Tribunal to prove the charge against the workmen. The Tribunal held that the domestic enquiry was not proper, that the appellant was guilty of mala fide conduct and victimisation, that except in the case of one workman, the others were guilty of deliberate go-slow and accordingly granted permission in respect of the one workman only. It is against the said decision that the appellant-Mills had approached this Court. This Court held that the evidence produced before the Tribu- nal clearly established that 13 out of the 20 workmen were guilty of deliberate go-slow and in that connection observed as follows:

"Go-slow which a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontended or

disgruntled workmen sometime resort to. It would not be far wrong to call this dishonest. For, while thus delaying production and thereby reducing the output the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, "go-slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off, during the "go-slow" the machinery is kept going on a reduced speed which is often extremely damaging to machinery parts. For all these reasons "go-slow" has always been considered a serious type of misconduct." This Court, therefore, set aside the order of the Tribunal refusing permission to dismiss 13 of the workmen.

20. There cannot be two opinions that go-slow is a serious misconduct being a covert and a more damaging breach of the contract of employment. It is an insidious method of undermining discipline and at the same time a crude device to defy the norms of work. It has been roundly condemned as an industrial action and has not been recognised as a legit- imate weapon of the workmen to redress their grievances. In fact the model standing orders as well as the certified standing orders of most of the industrial establishments define it as a misconduct and provide for a disciplinary action for it. Hence, once it is proved, those guilty of it have to face the consequences which may include deduction of wages and even dismissal from service.

But by its very nature, the proof of go-slow, particu- larly when it is disputed, involves investigation into various aspects such as the nature of the process of produc- tion, the stages of production and their relative impor- tance, the role of the workers engaged at each stage of production, the pre-production activities and the facilities for production and the activities of the workmen connected therewith and their effect on production, the factors bear- ing on the average production etc. The go-slow further may be indulged in by an individual workman or only some workmen either in one section or different sections or in one shift or both shifts affecting the output in varying degrees and to different extent depending upon the nature of product and the productive process. Even where it is admitted, go-slow may in some case present difficulties in determining the actual or approximate loss, for it may have repercussions on production after the go-slow ceases which may be difficult to estimate. The deduction of wages for go-slow may, there- fore, present difficulties which may not be easily resolu- ble. When, therefore, wages are sought to be deducted for breach of con tract on account of go-slow, the quantum of deduction may become a bone of contention in most of the cases inevitably leading to an industrial dispute to be adjudicated by an independent machinery statutory or other- wise as the parties may resort to. It is necessary to empha- size this because unlike in this case of a strike where a simple measure of a pro rata deduction from wages may pro- vide a just and fair remedy, the extent of deduction of wages on account of a go-slow action may in some case raise a complex question. The simplistic method of deducting uniform percentage of wages from the wages of all workmen calculated on the basis of the percentage fail in production compared to the normal or average production may not always be equitable. It is, therefore, necessary that in all cases where the factum of go-slow and/or the extent of the loss of production on account of it, is disputed, there should be a proper inquiry on charges which furnish particulars of the go-slow and the loss of production on that account. The rules of natural justice require it, and whether they have been followed or not will depend on the facts of each case.

21. In the present case, the Industrial Court, as point- ed out earlier, has accepted the evidence of the witness of the Company that the workmen had not worked for full eight hours on any day in the month concerned, namely, July 1984, and that they were working intermittently only for sometime and were sitting idle during the rest Of the time. According to him, the workers had worked hardly for an hour and 15 to 20 minutes on an average during the said month. The witness had also produced notices put up by the Company from time to time showing the daily fall in the production and calling upon the workmen to resume normalcy. There is further no dispute that the copies of these notices were sent to the Union of the workmen as well as to the Government Labour Officer. The Industrial Court did not accept the evidence of the workmen that there was no go-slow as alleged by the Company. Accordingly, the Industrial Court has recorded a finding that the pro rata deduction of wages made by the Company for the month of July 1984 did not amount to an act of unfair labour practice within the mean- ing of the said Act. It does not further appear from the record of the proceedings before the Industrial Court that any attempt was made on behalf of the workmen to challenge the figures of production produced by the Company. These figures show that during the entire month of July 1984, the production varied from 7.06 per cent of 13.9 per cent of the normal production. The Company has deducted wages on the basis of each day's production. In view of the fact that there is a finding recorded by the Industrial Court that there was a go-slow resorted to by the workmen and the production was as alleged by the Company during the said period, which finding is not challenged before us, it is not possible for us to interfere with it in this appeal. As stated above, all that was challenged was the right of the employer to deduct wages even when admittedly there is a go-slow which question we have answered in favour of the employer earlier. The question with regard to the quantum of deduction from the wages, therefore, does not arise before us for consideration. It is, however, likely that the work- men did not question the figures of production before the Industrial Court because they were armed with the two deci- sions of the High Curt (supra) which according to them, had negatived the right of the employer to deduct wages even in such circumstances. While, therefore, allowing the appeal, we direct that the appellant will not deduct more than 5 per cent of the wages of the workmen for the month of July 1984.

22. The appeal is allowed accordingly with no order as to costs.

G.N. Appeals allowed.