Title:
Supreme Court of India with reference to the doctrine of Separation of Powers

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603

Summary:
It has been held by the Indian Supreme Court that the Constitution of India adopts the doctrine of Separation of Powers as known to Western Constitutionalism. It is well known that the VII Schedule of the Constitution deals legislative powers as distributed between the Union and State Governments. It is clear that Entry 22 in Concurrent List deals with labour relations [13]. When the Constitution had conferred the specific power to deal with labour relation to specific organs, can the Supreme Court act as a metal-constitutional organ and usurp the powers given to the other organs? Pronouncing an opinion on the right of employees to strike is an act of legislation and the act of the Supreme Court in pronouncing its view is a judicial legislation, which should be frowned by the competent legislative forums. It is unnecessary to add to the informed readers that the finding of Supreme Court in the present case that the workers do not have any moral or equitable right to strike is just trivial and do not deserve any discussions.

Keywords:
supreme court, supreme court of india, indian supreme court, suprem court, supreme cort, indian constitution, labour law, legislation act, judgment, supreme court judgment, supreme court judgement

Article Body:
It has been held by the Indian Supreme Court that the Constitution of India adopts the doctrine of Separation of Powers as known to Western Constitutionalism. It is well known that the VII Schedule of the Constitution deals legislative powers as distributed between the Union and State Governments. It is clear that Entry 22 in Concurrent List deals with labour relations [13]. When the Constitution had conferred the specific power to deal with labour relation to specific organs, can the Supreme Court act as a metal-constitutional organ and usurp the powers given to the other organs? Pronouncing an opinion on the right of employees to strike is an act of legislation and the act of the Supreme Court in pronouncing its view is a judicial legislation, which should be frowned by the competent legislative forums. It is unnecessary to add to the informed readers that the finding of Supreme Court in the present case that the workers do not have any moral or equitable right to strike is just trivial and

do not deserve any discussions.

Even the international instruments emphasise that denial of such rights would amount to violation of basic labourers rights. Article 8(1)(d) International covenant on Economic, Social and Cultural Rights [14] states that the State Parties to the present covenant undertake to ensure the right to strike, provided that it is exercised in conformity with the laws of the particular country. Sub Sec.(2) of Article 8 further states that this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of armed forces or of police or of the administration of the State [15]. It is pertinent to note that Sub Section (3) of Article 8 does not authorise legislative measures to curtail the rights of workers [16]. But we are facing a situation wherein judiciary, essentially a body to adjudicate, has pronounced measures to curtail the rights of workers. The power to deal with the international relations had been conferred to Union Government under entries 12, 13 and 14 of union list in Schedule VII of the Constitution. Then how can a domestic judicial organ jeopardise the finely held obligations be made valid. That means it has given a go-bye by the Supreme Court in pronouncing such a ruling. From this it is very clear that the Supreme Court acted in an area in which it does not have any jurisdiction at all and in the light of earlier observation on the judgement, it is unnecessary to have any discussions on such ruling and that ruling does not have any force of law.

There are other conventions that emphasises the workers right for collective bargaining, which includes right to strike. The Committee on freedom of Association, which examined the workers right to strike under the provisions of ILO, had given a finding that the strikes are recognised as legitimate weapons in furtherance of member's interest [17]. The Committee further states that any general provision would recognise the right of state employees to go for a strike with restrictions, though such restrictions shall not prohibit the right to strike. Going a step further, the Committee also recommended that the workers organisation should not be prevented from striking against the social and economical policy of the Government [18]. Even a legislation that replaces the employees who are under strike with new recruits would seriously affect the rights of trade unions. Concluding the above recommendation, the Committee said that the right is not absolute and may be restricted in exceptional circumstances or even prohibited for certain categories of workers, in particular, certain public servants …on the condition that compensatory guarantees are provided to such public employees [19].