

Further, the suggestion emerged in the symposium on social security for workers in the unorganised sector, conducted by Social Security Association of India, New Delhi are significant and worth considering for extension of social security to the workers in the unorganised sector.

These suggestions are that a cess be levied on all manufactures and the proceeds be utilised for meeting the social security needs of the workers in the unorganised sector. The other suggestion was that awareness should be created among the workers.

These are some of the recommendations and suggestions made by various bodies for promotion of social security to the workers in the unorganised sector.

### **Conclusion**

Apart from Constitutional mandate, social

security for all is considered as a basic Human Right under the Universal Declaration of Human Rights. Every member nation of U.N.O. must strive to further and promote *this* basic right. As the study on the subject of social security for workers in unorganised sector reveals, though many schemes and policies have been evolved both at Central and State level to achieve the said object, the result is not so satisfactory because of non-implementation of the schemes properly. To make these schemes effective, both governmental and non-governmental organisations must be encouraged. Further, more and more social assistance programmes be evolved because in case of social insurance schemes the workers in the unorganised sector are unable to contribute regularly due to uncertainty of income *etc.* But at the same time there must be a proper control and check to prevent misuse of the social assistance programmes.

---

## **“THE LAW ON WORKMEN, STRIKES AND WAGES”**

*By*

**—Dr. P. VENKATESWARA REDDY,**  
M.A., L.L.M., M.D. (AY)  
Indira Nagar, Khammam, A.P.

### **Introduction**

Strikes are a common feature in almost every industrial establishment now-a-days. They are often resorted to by the employees or workmen as a means of enforcing compliance with their demands. But does every act of striking work amount to a “Strike”? And do the workmen have to be paid wages for the period of the strike, even if the strike was unjustified or, for that matter even if it was illegal?

Every Industrial Relations Manager is confronted with these questions, and it would

help to know the laws on the subject “Take the definition of the word strike”, to start with – Section 2(q) of The Industrial Disputes Act, 1947 defines the term “Strike” as a ‘cessation of work by a body of persons employed in an industry action in combination, or a combination, or a concerted refusal under common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment’. This definition makes it very clear that every cessation of work by workmen does not amount to a strike.

A strike should have the following essential ingredients.

1. Cessation of work or refusal to work.
2. The cessation of work must be by a body of persons - *i.e.*, a plurality of workmen. This is further substantiated by the words “acting in combination or a concerted refusal or a refusal under common understanding”.
3. This body of persons must be employed in an industry. The words “employed in an industry” imply that there should be an ‘industry’ within the meaning of Section 2(j) of The Industrial Disputes Act, 1947, in which these workmen who have resorted to strike are employed. Thus, unless the establishment in which the striking workmen are employed is an “industry” it would not amount to a strike within the meaning of Section 2(q), even if the other ingredients are there.
4. Contract of employment, the expression “persons employed” as used in Section 2(1) of the Act, implied that there should be a contract of employment between the striking employees and the industry. In other words these employees must be covered by the definition of workmen as contained in Section 2(s) of The Industrial Disputes Act, 1947, *i.e.*, there has to be a master-servant relationship.

The employer must have due control and supervision over the employee. In the contract of employment of every workman, there is an implied term that he will work according to the rules specified by the employer.

Furthermore, even if there is cessation of work, action is combination, by a body of persons employed in an industry, it will not be a strike unless it is for enforcing an industrial demand.

### *Varying Definitions*

The Oxford Dictionary defines a strike as a concerted cessation of work on the part of a body of workers for the purpose of obtaining some concessions from their employers. Webster’s Dictionary defines it as a quitting of work by a body of workers with mutual understanding, as a means of enforcing compliance with demands made on their employer. The Encyclopaedia Britannica defines a strike as “a stoppage of work by common agreement on the part of the work people for the purpose of obtaining or resisting a change in the conditions of employment.

According to Ludwing Teller, the word “Strike”, in its broad significance, has reference to a dispute between an employer and his workers, in the course of which there is a concerted suspension of employment. He describes the four characteristics of “Strike”. as employed in modern times, as :

- (A) An established relationship between the strikers and the person or persons against whom the strike is called;
- (B) The constituting of that relationship as one of employer and employee;
- (C) The existence of a dispute between the parties, and the utilisation, by the labour, of the weapon of concerted refusal to continue to work as a method of persuading or coercing compliance with ‘workmen’s demands’;
- (D) The contention advanced by workers that, although work ceases, the employment relation is deemed to continue, albeit in a state of belligerent suspension.

According to Professor Mathew, a strike, itself, is part of the bargaining process. It tests the bargaining power of each side. As the strike progresses the worker’s savings disappear, the union’s funds dwindle, and the

Management faces mounting losses. Demands are tampered with; offers extended; and compromises previously unthinkable becomes acceptable. The very economic pressure of the strike is a catalyst which makes the agreement, possible. Collective bargaining is a process of reaching an agreement, and strikes are an integral and necessary part of that process.

### *Legality and Illegalities*

As per the provisions of Section 22 of The Industrial Disputes Act, 1947, no person employed in a public utility service (a public utility service is defined in Section 2(n), of the Act shall go on strike in breach of a contract “(a) without giving to the employer notice of strike within six weeks before striking of (b) within 14 days of giving such notice or (c) before the expiry of the date of lockout specified in such notice as aforesaid (d) during the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conclusion of such proceedings”

No notice of strike is required to be given to the employer where there is already in existence a strike in the public utility service, however, the employer is bound to send intimation of such strike on the day on which it is declared, and to such authority as may be specified by the appropriate Government, either generally or for a particular area, or for a particular class of public utility services. Further, sub-section (6) of Section 22 provides that where the employer receives notice of strike from any number of persons employed by him, he shall, within five days thereof, report to the appropriate Government, or such authority as that Government may prescribe, the number of such notices received on that day.

Section 23 of the Industrial Disputes Act, 1947, contains provisions regarding the general prohibition of strikes. According to the provisions contained In this section, no

workmen, employed in any industrial establishments shall go on strike in breach of contract during:

- (A) The pendency of conciliation proceedings before a Board and after the conclusion of such proceedings; or
- (B) During the pendency of proceeding before a Labour Court, Tribunal, and two months after the conclusion of such proceedings; and
- (BB) During the pendency of arbitration proceedings before an Arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of Section 10-A. (This section postulates that where an industrial dispute has been referred to arbitration and the appropriate Government, if satisfied that the person making the reference represents the majority of each party, it may issue a notification prohibiting the continuance of any strike which may be in existence on the date of reference, in such manner as may be prescribed.)

Further, when any such notification is issued, the employers and workmen who are not parties to the Arbitration Agreement, are concerned with the dispute, are to be given an opportunity of presenting their case before the Arbitrator or Arbitrators; or

- (C) During any period in which a settlement or award is in operation in respect of the matters covered by the settlement or award.

Section 24 of The Industrial Disputes Act, 1947, lays down that a strike becomes illegal when :

- (a) It is commenced or declared in contravention of Section 22 or Section 23.
- (b) It is continued in contravention of an order made under sub-section (3) of

Section 10 or sub-section (4-A) of Section 10-A.

(Sub-section (3) through Section 10 provides that where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under Section 10, the appropriate Government may prohibit the continuance of any strike in connection with such disputes which may be in existence on the date of reference. Sub-section (4-A) to Section 10-A provides that where an industrial dispute has been referred to arbitration, and a notification has been issued under sub-section (3-A), the appropriate Government may, by order, prohibit the continuance of any strike in connection with such disputes which may be in existence on the date of reference.)

### ***Justified or Unjustified***

A right to strike is labour's ultimate weapon, and in the course of the century it has emerged as an inherent right of every workman. It is an element which is of the very essence of the principles of collective bargaining. Any strike would be legal unless and until it contravenes any of the statutory provisions. But even a legal strike may become unjustified under certain circumstances while an illegal strike can never become justified.

The justifiability of a strike depends upon:

- (1) The reasonableness or fairness of demands, or, in other words, the nature of demands.
- (2) Means employed by the workmen in resorting to strike may convert a perfectly legal strike into an unjustified strike.

Although a strike is a legitimate weapon in the workers armoury, its hasty and indiscriminate use should be avoided. In general, it should be resorted to only when all other legal alternative have been exhausted.

The justifiability of a strike has to be viewed from the reasonableness of the demands made by workmen, and not merely from the standpoint of their exhausting all other legitimate means open to them for getting the demands fulfilled. The question of justifiability or non-justifiability also depends upon whether the demands are made *bona fide* for betterment of service conditions or made frivolously, or for ulterior purpose.

According to *Das Gupta J.*, "collective bargaining for security improvement on matters like these - *viz.*, basic pay, dearness allowance, bonus, provident fund and gratuity, leave and holidays - is the primary object of a Trade Union, and when demands like these are put forward and thereafter, a strike is resorted to in an attempt to induce the company to agree to the demands or, at least, open negotiations, the strike must *prima facie* be considered justified."

In *Churakulam Tea, Estate v. Its Workmen*, 1969, the Supreme Court held that the strike in the company was not illegal as there was no contravention of Section 23(a) inasmuch as there was no conciliation proceedings pending before a "Board" (the term 'Board' is defined in Section 2(i) of the Act) on the date of strike. It was further held that the strike was not unjustified as it was not directly connected with the demand for bonus, and that evidence established that the strike was begun as a protest against the unreasonable attitude of Management in boycotting the conference held by the Labour Minister. A strike is legal if it is commenced without contravening the statutory provision, and it may be justified if it is *bona fide* resorted to for the betterment of service of workmen. However, though a strike may be both legal and justified on its commencement it may become illegal if continued after an order under Section 10(3) has been made by the "appropriate Government". A strike may also become unjustified as it progresses if the striking workers resort to acts of violence and sabotage. It may become unjustified if

motivated by extraneous considerations not connected with the genuine grievances of the workmen. Thus, though the strike may not be illegal, it might certainly be unjustified while a legal strike can be categorised as justified or unjustified, can a strike in contravention of statutory provisions - *i.e.* a illegal strike be so categorised? In *India General Navigation and Railways Co. Ltd Their Workmen*<sup>1</sup>, the Law and the point was stated by *C. Sinha* in the following words :

“The Tribunal, having held the strike illegal, proceeded to discuss the question whether it was justified, and came to the conclusion that it was ‘perfectly justified. Firstly, it is a little difficult to understand how a strike in respect of a public utility service, which is clearly illegal, could at the same time be characterised as ‘Perfectly justified. These two conclusions cannot, in Law, exist. The Law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be to be justifiable and one which is not justifiable. This distinction is not warranted by Act, and is wholly misconceived, special case of employees in a public utility service. Everyone participating in an illegal strike liable to be dealt with departmentally, project to the action of the department question before an Industrial Tribunal it is not permissible to characterise an legal strike as justifiable.”

### ***Wages for the Period of the Strike***

Are the workmen entitled to wages for the period of the strike? What would the consequences be if the strike was illegal, or legal but unjustified?

It is a well-settled proposition of Law that where the strike is legal as well as justified the workmen are entitled to full wages for the entire period of the strike. In *Churakulam*

*Tea Estate v. Its Workmen*<sup>2</sup>, it was held by *Vaidialingam, J.* that, in cases where the strike is neither illegal nor unjustified, the concerned workmen are entitled to wages for the period of the strike. This view, however, ignores the definition of wages (as contained in Section 2(rr), according to which “wages” mean all remuneration capable of being expressed in terms of money, and which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment. This also ignores the definition of a strike, which, according to Section 2(q), means cessation of work or refusal to continue to work or accept employment by workmen. Can the workmen go on strike and, at the same time, fulfil the conditions or terms of their employment? By striking work, they refuse to fulfil the express or implied terms of their employment. As per Section 2(rr), the workmen are entitled to wages or remunerations only if they fulfil the terms of employment. Non-fulfilment of terms of employment, therefore, disentitles the workman to claim any remuneration in form of wages (supra 2).

In *The Algeme Bank Nederland v. Central Government Labour Court*<sup>3</sup> J.) it was observed that the main term of employment is, undoubtedly, that the employee would work for a specified period during the working hours, and would do a specified work task. In view of the words “remuneration that would have been payable if the terms of employment were fulfilled,” occurring in the definition of wages in The West Bengal Shops and Establishments Act. If the employee does not fulfil the terms of employment then, the remuneration would not be payable.

The justification behind the view taken by *J. Vaidialingam* right of the workmen, where the strike is legal as also justified, the general

1. AIR 1960 SC 219 (227-228)

2. AIR 1969 SC 998 = 1969 Lab IC 1396 (1400-1401) (supra 9)

3. 1978 Lab IC 47 (Cal) Per Sabyasahi Mukharjee



inference that can be drawn is that the workmen have been forced to resort to a strike due to the indifferent and recalcitrant attitude of their employer. In *Crompton Greaves Ltd. v. Their Workmen*<sup>4</sup>, the workers had gone on strike protesting against retrenchment resorted to by the appellant. Later, the question of wages for the strike period came before the Tribunal and it upheld the workmen's claim for a portion of the strike period.

On the facts of this particular case, the Supreme Court came to the conclusion that the strike was neither unjustified nor illegal. The Tribunal had, as a fact, found that the workmen had not resorted to the use of any form of violence where, however, the strike is illegal or unjustified, the workmen are not entitled to wages for the period of strike. In Indian "*General Navigation and Railway Co. Ltd. v. Their Workmen*"<sup>5</sup>, where the workmen had participated in an illegal strike, the question arose as to the payment of wages for the period of strike. C.J. *Sinha* negating the contention of the workmen that they were entitled to wages for the period of strike, expressed its judicial opinion.

".... The only question of practical importance which may arise in the case of an illegal strike would be the kind or quantum of punishment, and that, of course, has to be modulated in accordance with the facts and circumstances of each case. Therefore, the tendency to condone what has been declared to be illegal by statute must be deprecated and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers". But does this mean that mere participation in a strike merits maximum punishment to all the participants, or is some distinction to be made between persons who were mere participants and those who incited others to resort to strike and violent means of

demonstration? In answer to this question in the abovementioned case, *Sinha* observed :

"There may be reasons for distinguishing the case of those who may have acted as mere dumb, driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence."

In *M/s. Burn & Co. Ltd. v. Their Workmen*<sup>6</sup>, Supreme Court clearly laid down that mere participation in the strike would not justify the suspension or dismissal of the workmen, particularly where no clear distinction can be made between those persons and the very large number of workmen who had been taken back into service although they had participated in the strike.

In *Bata Shoe Co. v. Ganguly*<sup>7</sup>, the Supreme Court, after referring to the case of *M/s. Burn & Co.*, observed that there is no doubt that if an employer makes an reasonable discrimination in the matter of taking back employees, there may, in certain circumstances, be reason for the Industrial Tribunal to interfere, but the circumstance of each case has to be examined before the Tribunal can interfere with the order of the employer, in a properly held managerial Inquiry, on the ground of discrimination. Still, this case does not lay down any distinct proposition regarding the treatment to be meted out to the participants in strike and, actually, it is a decision on its own facts.

The Supreme Court, first in the *Churakulam Tea Estate* (supra 9) and then in the *Crompton Greaves Ltd.* case (supra 13), held that the workmen are entitled to wages only if the strike is legal as well as justified. However, In *Bank of India v. T.S. Kalavala*<sup>8</sup>, the Court took the view that, whether the strike was legal or

4. 1978 Labour 1379 (1380-1381) = AIR 1978 SC 1489

5. AIR 1960 SC 219 (supra 6)

6. AIR 1959 SC 529 (531-532)

7. AIR 1961 SC 1158

8. (1990) 4 SCC 744

illegal, workers are not entitled to wages for the period of strike. But if the strike is illegal, then, in addition to being deprived wages, they also expose themselves to punishment. In the *Syndicate Bank v. Umesh Nayak*<sup>9</sup>, the five member Constitution Bench of the Supreme Court laid down the wages for the period of strike were to be paid only if the strike is legal as well as justified. In this cases, it was a slightly disputed question whether the strike was legal or illegal. On the face of it, the strike was illegal, and the trial Court relying on *T.S. Kelavala's* case held that no wages to be paid for the period of strike. But on appeal to the High Court it was held that the strike was legal and justified, and

therefore, the workmen are entitled to wages for the period of strike.

On appeal, the Supreme Court observed that there was no conflict between the *Churakulam Tea Estate* case and the *Crompton Greaves Ltd.* case on the one hand, and the *T.S. Kelavala* case, on the other. In *T.S. Kelavala's* case, the question of justifiability was not challenged at all. The Supreme Court, in the facts and circumstances of the case, held the strike to be illegal, thereby disentitling the workmen from claiming wages for the period of strike. It reiterated that wages, for the period of strike, are to be paid only if the strike is legal and justified.

---

## EQUAL PAY FOR EQUAL WORK : A MYTH OR REALITY

By

—Dr. S. VIJAYALAKSHMI, Principal  
Dr. B.R. Ambedkar Law, College,  
Hyderabad, A.P.

### Introduction

The 100th anniversary of International Women's Day was celebrated recently on March 8. But it is evident that for a large majority of working women the conditions are not much different from what they were more than a century ago, when the idea of observing Women's Day all over the world. This is an occasion to examine the position of women in India and to assess whether equal opportunities are provided to women on par with men.

In India the family and the State, both operate on patriarchal gender modes. This has widened the gap between women and men and put women in a disadvantageous position. The gender based discrimination still

represents the ugly face of the society of our times. The Human Development Report 1995 points out that "in no society women enjoy the same opportunities as man<sup>1</sup>. Women all over the world have, by and large been discriminated against in almost every sphere. This discrimination is more apparent in the field of economic activity. According to United Nations Report 1980, "Women constitute half of world's population, perform nearly two thirds of its work hours, receive one tenth of the world's income and own less than one hundredth of the world's property. This shows the extent of economic exploitation of women.

Discrimination in wages between men and women is an important aspect involved in the exploitation of labour. Underpayment is

---

9. AIR 1995 SC 319

1. Report of the National Commission on Labour, 2002 p.933