

HAL Employees' Union

Vs

Presiding Officer and Another

Civil Appeal No. 4041 of 1985

(K. Ramaswamy, Sujata V. Manohar JJ)

01.05.1996

ORDER

1. This appeal by special leave arises from the award of the Industrial Tribunal, Lucknow made in Adj. Case No. 7708 of 1983 on 28-4-1984. The admitted facts are that the respondent declared lockout from 4-6-1978/5-6-1978 and wages to the workmen were deducted for that period. An industrial dispute was raised which came to be referred under Section 4-K of the U.P. Industrial Disputes Act, 1947 (28 of 1947), the State Act which is equivalent to Section 10(1)(c) of the Industrial Disputes Act, 1947, the Central Act. The Tribunal after considering the entire evidence on record and appreciating the diverse contentions raised by the counsel on either side, recorded, as a fact, the finding that the lockout declared by the respondent w.e.f. 4-6-1978/5-6-1978 to 18-6-1978 was both just and lawful; hence the question of any relief to the workmen does not arise.

2. It is contended by Shri A.K. Goel, the learned counsel for the appellant, that on the own showing of the respondents it is not a case of total strike by the rival unions; there was production to the extent of 15% which would show that the strike which ended on 31-5-1978 and the lockout declared on 4-6-1978/5-6-1978 was not due to continuing strike and that, therefore, the management was not justified in reaching the conclusion without following the procedure prescribed under Section 6-S(2) of the State Act which is equivalent to Section 22(3) of the Central Act, to declare lockout. With a view to appreciate the contention, it is necessary to extract the relevant provisions of the Act.

3. Section 22 falls in Chapter V which deals with strikes and lockouts. It prohibits strikes and says that no person employed in public utility service shall go on strike in breach of contract as enumerated in clauses (a) to (d) of sub-section (1) thereof. Sub-section (2) prohibits declaration of lockout for the circumstances mentioned in clauses (a) to (d) of sub-section (2). Sub-section (3) postulates that :

"22. (3) The notice of lockout or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lockout in the public utility service, but the employer shall send intimation of such lockout or strike on the day on which it is declared, 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."

4. Section 24 declares what are illegal strikes or illegal lockouts. It says that :

"24. (3) A lockout declared in consequence of an illegal strike or a strike declared in consequence of an illegal lockout shall not be deemed to be illegal."

It is seen that the strike continued until 4-6-1978/5-6-1978 and the lockout was continued up to 18-6-1978. In view of the finding recorded by the Tribunal that there was an illegal strike in consequence of which the lockout was declared by the respondent Management, it cannot be declared that the lockout is illegal. On that finding, the question arises : whether they are entitled to the payment of wages for the period of lockout?

5. The controversy as regards illegal strike and payment of wages for that period was considered by this Court in *Syndicate Bank v. K. Umesh Nayak* [(1994) 5 SCC 572 : 1994 SCC (L&S) 1197 : (1994) 28 ATC 146] by a Constitution Bench. It was held that "no-work no-pay" is the principle applicable to public utility services; wages during strike period would be payable only if the strike is both legal and justified but not payable if strike is legal but not justified or justified but illegal. The strike may be of different forms like go-slow, work to rule, refusal to work overtime, irritation strike etc. We are bound by the ratio of the said Constitution Bench judgment which applies to declaration of the lockout which is the consequence of illegal strike organised by the workmen. The lockout is both legal and justified in the present case. As a result, the workmen are not entitled to the payment of wages for the period during which the lockout continued.

6. The appeal is accordingly dismissed. No costs.