



RESEARCH ARTICLE

RIGHT TO STRIKE AND THE ROLE OF JUDICIARY IN INDIA

Dr. Rashmi Gogoi

Pathsala, Dist. Bajali (Assam).

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Abstract

Strike means collective concentrated stoppage of work by the workers in order to pressurize the employer with a view to improve their wages or to protest against grievance about something or in support of other workers. The Supreme Court in several case laws observed that where strike has been declared illegal in public utility service and an amicable settlement has been concluded in the Conciliation proceedings The judgment of the Supreme Court is final until overruled. It is hoped that the Supreme Court will come up with a solution for upholding the democratic right of right to strike.

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Introduction:-

Ever since the employer-employee relationship began, strikes have played an important role in industrial relations i.e. the workers to negotiate with the employers effectively.

Strike means collective concentrated stoppage of work by the workers in order to pressurize the employer with a view to improve their wages or to protest against grievance about something or in support of other workers. It is the weapon in the hands of the workers and generally labour's last resort in connection with industrial controversies.¹

During the course of hundred years the working classes in almost all countries over the world use strike as a weapon and as a part of their struggle against inhuman and degrading conditions. It has become recognized that the workers as a class should be allowed to have and exercise this right to strike, subject to certain legal provisions and conditions. The right to strike has also found in the Universal Declaration of Human Rights of the United Nations Organization by way of assertion of every one's right to work, right to just and favourable remuneration and right to form and join Trade Unions as also the right to rest, leisure, leave etc. and the right to fair living conditions with the necessary social benefits.²

Right to Strike under the provisions of the Trade Unions Act, 1926 and the Industrial Disputes Act, 1947

The term strike has not been defined in the Trade Unions Act, 1926. However, the term strike has been defined in Section 2(q) of the Industrial Disputes Act, 1947 such as cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

¹ S.N. Mishra, Labour and Industrial Laws, p. 192

² Mallikarjuna Sharma, Right to Strike, 46 JILI 522

The most important characteristics of strike on the basis of the definitions are-

1. Cessation of work: the most significant characteristic of strike is the cessation of work which can be expressed as refusing or failing to accept engagement for any work which that are usually employed for such as abandonment, stoppage, omission of performance of duties of their posts, hampering or reducing normal works, hindrance to the working or suspension of work etc. Thus, the main requirement for strike is that there must be stoppage of work refusal to continue the work. But the refusal must be concerted or under a common understanding.³ The cessation of work may be in a varied form. It may be temporary but should be voluntary one. It may be nominal for a few minutes even. In **Buckingham and Carnatic Company Ltd. v. Workers of the Buckingham and Carnatic Co. Ltd.**⁴ the Supreme Court observed the action of the workers were concerted and clearly fell under the provision are present in this case even though the strike was started by the workers in different times such as some of them stopped work at 4 p.m., some at 4.30 p.m., and some at 5 p.m., and finally the stoppage ended at 8 p.m. on the 1st November, 1948. It was further observed by the Supreme Court that if it could not be denied that the stoppage of work amounted to a strike then it was certainly an illegal strike because no notice had been given to the management as the mill comes under the public utility service.
2. Concerted Action: Stoppage of workers individually does not amount to strike. It should be a concerted action with common understanding and workers combination of work. It was observed by the apex Court that the action of the 859 workers on the night of the 1st November, 1948 fell within the definition of the word strike as given in section 2 (q) of the Industrial Disputes Act and it was an illegal strike and the workers thus lost the benefits of holidays that they would have otherwise got under the rules.⁵ The concerted action of the workers of refusing must be what the workers are bound to do in ordinary course of business. If for a work the worker has the liberty to do or not to do that would not amount to strike such as over-time work.
3. Strike as a result of industrial dispute: Strike should be the result of Industrial dispute as was observed in **Model Mills v. Dharam Das**,⁶ where two employees were deputed to work on a machine instead of three workers and their refusal to work amounts to an industrial dispute. The stoppage of work amounts to strike.

Strike is a weapon of last resort for the workers to meet their view-point of the disputes over their employers. It is a total cessation of work in various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, irritation strike or staying at work but deliberately doing everything wrong, disobeying the lawful orders, sit-down, stay-in and lie-down strike.⁷ In **Iron Metal Traders Pvt. Ltd. v. M.S. Haskiel and others**,⁸ the Supreme Court held that the strikers of a legal strike cannot be discriminated. The Supreme Court in several cases observed that justice, equity and good conscience should be the distinguishing feature in issuing any circular relate to 'no work, no pay' which attempts to stifle a legitimate weapon given by the law to the workers to ventilate their grievances by drawing public attention to them such as held in **Algemene Bank v. Central Govt. Labour Court**,⁹ **V. Ram Chandran v. Indian Bank**,¹⁰ **R. Raja Manickam v. Indian Bank**,¹¹ **Dharam Singh v. Bank of India**,¹² **V. Ganesan v. State Bank of India**,¹³ **R.N. Shenoy v. Central Bank of India**¹⁴.

Prohibition of Strikes

Prohibition of strikes is defined in Section 22 of the Industrial Disputes Act, 1947. According to this Section, strikes and lock-outs are not absolutely prohibited but certain requirements are to be fulfilled by the workmen before resorting to strike or by the employers before locking out the place of business conditions laid down in Section 22(1) and Section 22(2) are to be fulfilled in case of strike and lock-out in any public utility service.

³ V.G. Goswami, Labour and Industrial Laws, Central Law Agency, Vol.2, p.277

⁴ AIR 1953 SC 47

⁵ ibid

⁶ AIR 1958 SC 311

⁷ Syndicate Bank and Another v. K Umesh Nayak, (1994) 1 LLJ 836 SC

⁸ (1983) 2 LLJ 304 (SC)

⁹ (1978) 2 LLJ 117

¹⁰ (1979) 1 LLJ 122

¹¹ (1981) 2 LLJ 367

¹² (1979) 2 LLJ

¹³ (1981) 1 LLJ 64

¹⁴ (1984) 1 LLJ 1493

Section 22(1) provides that no person employed in public utility service shall go on strike in breach of contract without giving to the employer notice of strike within six weeks before striking or within fourteen days of giving such notice; or before the expiry of the date of strike specified in any such notice as aforesaid; or during the pendency of any conciliation proceeding before a Conciliation Officer and seven days after the conclusion of such proceedings.

Section 22(2) lays down that no employer carrying on any public utility service shall lock-out any of his workmen without giving them notice of lock-out within six weeks before locking out; or within fourteen days of giving such notice; or before the expiry of the date of lock-out specified in any such notice as aforesaid; or during the pendency of any conciliation proceeding before a Conciliation Officer and seven days after the conclusion of such proceedings.

Section 22(3) provides that the notice of strike or lock-out as provided by sub-sections (1) and (2) may in certain cases be dispensed with.

It is also mentioned in this section that no notice of strike shall be necessary where there is already in existence a lock-out and no notice of lock-out shall be necessary where there is already in existence a strike in the public utility service concerned.

The employer shall send intimation of strike or lock-out on the day on which it is declared to the specified authority. The authority to whom the above intimation is required to be sent shall be specified by the Appropriate Government either generally or for a particular area or for a particular class of public utility services. Sub-section (3) is in the nature of an exception of sub-sections (1) and (2) of Section 22.

Section 22(4) says that the notice of strike shall be given by such number of persons to such person or persons in such manner as may be prescribed.

Section 22(5) provides that the notice of lock-out shall be given in such manner as may be prescribed.

Section 22(6) deals with the intimation of notices given under sub-section (1) or (2) to specified authorities. If on any day an employer receives from any person employed by him any such notice as is referred to in sub-section (1), he shall within five days report to the Appropriate Government or to such authority as that Government may prescribe, the number of such notices received on that day. Similarly, if an employer gives any notice as is referred to in sub-section (2) to any person employed by him, he shall report this fact within five days to Appropriate Government or to such authority as the Government may prescribe.

Section 23 of the Industrial Disputes Act, 1947 deals with General Prohibition of strikes and lock-outs which applies to both public utility as well as non-public utility establishments. A strike in breach of contract by workmen and lock-out by the employer is prohibited during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings; during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings; 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, or during any period in which a settlement or award is in operation in respect of the matters covered by such settlement or award.

It was held in **State of Bihar v. Deodhar jha**,¹⁵ that these provisions in the Industrial Disputes Act are included to maintain a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly.

Therefore, it can be said that Section 22 applies to public utility concerns while Section 23 applies to both public utility as well as non-public utility concerns. Section 23 does not prohibit strike or lock-out during the pendency of conciliation proceeding before a Conciliation Officer, where Section 22 does so.

The Supreme Court observed that under Section 22(1) in a public utility service the workmen have to give notice of strike to the employer about the intended strike and must not go on strike before 14 days from the date of issue of

¹⁵ AIR 1958 Pat 51

notice and if the conciliation proceedings commenced and ended in failure and a period of six weeks has expired on the date on which intimation of failure is given by State Government to the workmen, a fresh notice is required to be given for resorting to strike in a legally recognized manner.¹⁶

The Supreme Court in several case laws observed that where strike has been declared illegal in public utility service and an amicable settlement has been concluded in the Conciliation proceedings disciplinary actions can be taken against the some of the workmen who refused to join duty.¹⁷

Right to Strike not a Fundamental Right

Justice M.B. Shah of the Supreme Court held that there is no fundamental statutory or equitable moral right to strike exists with the government employees.¹⁸ The Supreme Court referred to the Tamil Nadu Government Servants Conduct Rules 1973 where Rule 22 provides that no Government employee shall engage himself in strike or in incitements thereto in similar activities.

The claim of the workers in the appeal before the Appellate Tribunal in great part related to a demand for increased wages and salaries. The Supreme Court held that the Trade Union has the right to collective bargaining and the right to strike but these rights are restricted and controlled by appropriate industrial legislation as these are not fundamental rights of the Unions. The right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause(4) of Article 19 but by totally different considerations.¹⁹

However, the right to demonstrate peacefully is included in the right guaranteed under Article 19(1)(a) and 19(1) (b) of the Constitution and a blanket ban imposed on such demonstrations in Rule 4A of Bihar Govt. Servants Conduct Rules, 1956 is violative of Article 19(1)(a) and 19(1)(b) of the Constitution.²⁰

The judiciary from the very early period in the larger and national interest has been against strikes from the days of All India Bank Employees case.

Conclusion:-

Strike is an age-old weapon on the hands of the workers used in the encounters against the employers. From time being the working class steadily worked at national and international levels to recognize strike as a legitimate weapon for protection of their rights.

The decision of the Supreme Court implies a ban on the right to strike of the government employees. But, such a decision of the Supreme Court affects the whole working class and as a result the Trade Unions have shown their reactions against the decision. Workers have the right of strike in an industry complying with the provisions of the Industrial Disputes Act, 1947. This is also a recognised system of collective bargaining. It is to be mentioned that the judgment put a band on the right to strike but not made any reference to the right to lock-out which is a form of collective bargaining by the employer. Therefore, it is like to be a serious blow to the right of protest of the workers in the form of right to strike.

The judgment of the Supreme Court is final until overruled. It is hoped that the Supreme Court will come up with a solution for upholding the democratic right of right to strike. It can also be said that if the workers are properly entitled with these democratic right i.e. right to strike and collective bargaining obviously the Trade Unions will be able to raise the labour issues in settlement of the industrial disputes.

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¹⁷ Hind Construction and Engg. Co. Ltd. v. Workmen, AIR 1965 SC 917

¹⁸ T.K. Rangarajan v. Government of Tamil Nadu and Others, (2003) 6 SCC 581

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