

Reportable
* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 5471 of 2008

% Reserved on : March 25, 2009
Pronounced on : May 04, 2009

All India Central Government Health Scheme
Employees' Association (Delhi Branch) . . . Petitioners

through : Mr. K.B. Rohatgi with
Ms. Aparna Rohatgi Jain,
Advocates

VERSUS

Union of India & Ors. . . Respondents

through : Mr. R.V. Sinha, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner No.1 is the Association of employees of All India Central Government Health Scheme (hereinafter referred to as the 'Employees' Association'), which has espoused the cause of its workers. The petitioners Nos. 2 to 4 are the members and/or office bearers of the Employees' Association. These petitioners had filed OA before the Central Administrative Tribunal challenging orders dated 19.11.2007. In fact, on 17.7.2007, members of the Employees' Association, who are the employees of the Director General, Health Services (hereinafter referred to as the 'employer') had gone on strike

and 17.7.2007 is treated as *dies non* and break in service for those employees. The Tribunal has, however, dismissed the OA by holding that the petitioners had no right to go on strike and they cannot claim wages for illegal strike. Challenging that order of the Tribunal, the present writ petition is preferred.

2. The factual matrix which transpires is that the Employees' Association had certain demands, for which it had submitted charter of demands. One of the demands was to fill up the vacant posts on promotional basis. However, even when assurances were given, no action was taken and as there was no positive response to their charter of demands, the Employees' Association gave notice dated 4.6.2007 under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') intimating the employer that they would be launching phase-wise agitation. This notice stipulated that there would be lunch hour demonstration on 20.6.2007; members of the Association will perform work as per their legal status from 25th to 28th June 2007 all over India; 50 hour hunger fast will be observed by the members of the Employees' Association from 3rd to 5th July 2007 and it would be followed by one day strike on 17.7.2007. It is with the serving of such a notice that ultimately the members and office bearers of the Employees' Association went on strike on 17.7.2007.

According to them they had given due notice under the Act and this strike was not declared illegal. In spite thereof, on 13.8.2007, they were given show-cause notice to explain why

17.7.2007 should not be treated as *dies non* and break in service.

This show-cause notice was duly replied by every person making various legal submissions, but without dealing with the same the impugned non-speaking orders dated 19.11.2007 were passed treating 17.7.2007 as *dies non* with break in service.

3. Case of the petitioners before the Tribunal, as also before us, was that CGHC (employer) is an industry within the meaning of Section 2(j) of the Act. Employees' Association had right to air its grievances by resorting to the aforesaid means which are legitimate under the provisions of the Act. Due notice of strike was given. This strike was not declared illegal by any authority under the provisions of the Act. In the absence thereof, the employer could not pass the impugned orders treating the date of strike as *dies non* or break in service. The petitioners had also challenged the stand of the employer taking shelter under the provisions of FR 17A (i) and (ii) on the ground that both the provisions could not have been resorted to simultaneously. It was submitted that since CGHS was an industrial organization, the petitioners were covered under FR 17A (i) only and the conditions laid therein were not satisfied as the strike was not declared illegal.
4. The respondent, on the other hand, had opposed the OA by taking the plea that being Central Government employees, these petitioners were governed under the CCS (Conduct) Rules and any act in contravention of the rule would tantamount to misconduct and also an act unbecoming of a Government servant. It was pleaded that

some of the demands in the Charter of Demands were of routine and regular nature and were not of any serious magnitude to force the employees to resort to strike. There were periodical meetings held by the employer with the representatives of the Employees' Association and the employer was always willing to settle all the pending issues amicably. Therefore, there was no justification to resort/indulge in any activity which put lakhs of CGHS beneficiaries in difficulty. It was pleaded that in spite of specific instructions circulated vide letters dated 12.6.2007 and 12.7.2007 advising all the employees to restrain from participating in the strike, which was scheduled for 17.7.2007, they went ahead ignoring that advice. Such a strike had not only resulted in disruption of normal function, but had hampered the routine work in medical care to lakhs of CGHS beneficiaries across the country. The respondents also explained that CGHS, Delhi is meeting the medical needs of about 15,000 patients daily through its 87 Allopathic and 31 Ayush Dispensaries and the act of the petitioners had taken the patients to ransom by depriving them of their health care needs. In these circumstances, the impugned order, after complying with the requisites of FR 17-A, namely, opportunity to represent, for which show-cause notice dated 13.7.2007 was issued, was perfectly justified.

5. The order of the Tribunal would reveal that it proceeded on the basis that the petitioners were admittedly Government servants and, therefore, governed by the CCS (Conduct) Rules. Rule 7 thereof, which deals with demonstration and strike, specifically puts an

embargo on the Government servants to engage themselves or participate in any demonstration or resort to/abet any form of strike, etc. Government of India instructions under the aforesaid Rule have also been referred to by the Tribunal, which *inter alia* explained that strike would mean refusal to work or stoppage or slowing down of work by a group of employees and certain categories of activities are treated as strike like '*Go Slow*', '*Sit Down*', '*Pen Down*', '*Stay In*', '*Token*', '*Sympathetic*', or any other similar strike. On this basis, the Tribunal opined that there was no question of legal or illegal strike as alleged by the petitioners. Still the petitioners went on strike even when they are warned by specific notices dated 12.6.2007 and 12.7.2007 to the contrary. It resulted in disruption of the essential services being provided by the employer. Such a strike, according to the Tribunal, was illegal, as held by the Apex Court in the case of ***T.K. Rangarajan v. Govt. of Tamil Nadu***, 2004 (1) AISLJ 457, which was exactly on the same issue involved in this case. On this basis, the Tribunal also brushed aside the contention of the petitioners that since CGHS was an industry, the Employees' Association had right to go on strike and it was a valid strike. Contention of the petitioners that they were covered under FR 17-A (i) was also rejected, more so when action was taken after issuing show-cause notice.

6. The interesting situation which arises in the present case is that the employer, i.e. CGHS, as per the existing legal position, is to be termed as an '*industry*' within the meaning of Section 2(j) of the Act. It is also not in dispute that the petitioners or the members of the

Employees' Association are '*workmen*' covered by the definition contained in Section 2(s) of the said Act. Therefore, the provisions of Act would be applicable to the CGHS. Certain provisions are made relating to strike and lock outs in the industrial undertakings, including those which are providing public utility services. At the same time, it also cannot be disputed that these petitioners and other members of the Employees' Association are Government servants as well and are covered by the CCS (Conduct) Rules as well as the Fundamental Rules. Therefore, it is the interplay of the two provisions which calls for some balancing in order to appreciate the respective contentions of the parties.

7. Before we deal with the respective submissions of which we have already taken note of, it would be apposite to scan through the provisions of the Act relating to strikes as well as CCS (Conduct) Rules read with the relevant Fundamental Rules.

8. **Provisions under the Industrial Disputes Act**

Chapter V of the Act deals with '*Strikes and Lockouts*'. Section 22 prohibits strikes and lockouts in a public utility service under certain circumstances. Sub-section (1) thereof stipulates as under in this behalf :-

“Section 22. Prohibition of strikes and lockouts. –

- (1) No person employed in a public utility service shall go on strike in breach of contract –
 - (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
 - (b) within fourteen days of giving such notice; or

- (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

xx xx xx”

9. Section 23, on the other hand, deals with general prohibition of strikes and lockouts and reads as under :-

“Section 23. General prohibition of strikes and lockouts – No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lockout –

- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- (b) during the pendency of proceeding before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
- (bb) during the pendency of arbitration proceeding 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 10A; or
- (c) during any period in which a settlement of award is in operation in respect of any of the matters covered by the settlement or award.”

10. Section 24 of the Act deals with ‘illegal strikes and lockouts’ and reads as follows :-

“Section 24. Illegal strikes and lockouts –

- (1) A strike or a lock out shall be illegal if -
 - (i) It is commenced or declared in contravention of section 22 or section 23; or
 - (ii) 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.
- (2) Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a Labour Court, Tribunal or National

Tribunal, the continuance of such strike or lockout shall not be deemed to be illegal, provided that such strike or lockout was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 or sub-section (4A) of section 10A.

- (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.”

11. To make out a case of breach of Section 22 of the Act, two important requirements have to be set out and proved, namely :-

- (i) that the concern in which a strike took place is a ‘public utility service’ within the meaning of Section 2(n) of the Act; and
- (ii) that the strike is in ‘breach of a contract of service’ of the striking workmen.

Section 22 bans the commencement of strikes and lockouts in a public utility service, while Section 23 bans strikes and lockouts generally, in industrial establishments, in circumstances enumerated therein. Though every industrial establishment is not a public utility service, every public utility service is an industrial establishment. Therefore, Sections 22 and 23 will cumulatively apply to prohibition of strikes and lockouts in public utility services.

12. Every strike is not illegal and the workers enjoy the right to resort to strike, whenever they are so placed, in order to express their grievances or to make certain demands. Strikes are not banned even in the case of public utility service. They are only subjected to certain limitations. There is no doubt that the Act recognizes strikes as a legitimate weapon in the matter of industrial relations.

13. Thus, if the condition of giving notice of strike, even in respect of public utility, is fulfilled as per the requirement of Section 22, such a strike would be illegal. At the same time, the industrial jurisprudence recognizes that even if strike is 'legal' because of the reason that before resorting to strike requirement of Section 22 or Section 23 were fulfilled, it is not necessary that such a strike would be justified as well. If a strike is illegal, that is in contravention of Section 22 and/or Section 23, the consequences thereof, as provided under the Act would follow as it is accepted principle of law that an illegal strike cannot be justified. However, even when a strike is legal, in the sense that procedural formalities as provided in the aforesaid provisions are fulfilled, such a strike can still be an unjustified strike. Whether the strike is justified or not is the question of fact and depends on the justification of demands as well as compelling circumstances in which the employees were forced to go on strike. In *Chandramalai Estate v. Workmen*, (1960) 3 SCR 451, the Supreme Court made the following pertinent observations in this behalf :-

“Although the strike is legitimate and sometimes, an unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged without exhausting the avenues for peaceful achievements of their objects. The strike, except in case of demands of an urgent and serious nature, in which it would not be reasonable to expect the labour to wait till after asking the government to make a reference, is not otherwise justified. The industrial tribunal cannot come to the conclusion that the strike was half justified and half unjustified. The award of payment of 50 percent of the total emolument for the strike period is set aside.”

14. Some of the examples of unjustified strikes, as emerged from the case law, may now be noted :-

(a) A lightening strike when the process of moving the government for adjudicating the dispute had commenced, was unjustified.

(See – *Sadul Textile Mills Ltd. v. Workmen*, (1958) 2 LLJ 628)

(b) A strike launched in pursuance of a demand, not of an urgent or serious nature, was unjustified.

(See- *Fertilizer Corp. of India Ltd. v. Workmen*, (1978) 2 LLJ 80)

(c) The workers went on strike on Sunday and even prevented other workers from doing the work. When no notice of change was necessary in order to change the weekly-off day, then the strike was unjustified and the lockout was justified.

(See– *Workmen v. Sur Iron & Steel Co. (P) Ltd.*, (1971) 1 LLJ 570)

(d) The strike was intended to be a public one but the purpose was to circumvent the settlement in an amicable manner even though the company was ready for such settlement. The strike was, therefore, unjustified.

(See–*India Marine Service P. Ltd. v. Workmen*, (1963) 3 SCR 575)

15. The next question which arises, with which we are also concerned in the present case, is with regard to payment of wages for strike period. If the strike is illegal, there is no question of payment of any wages. Even if it is legal, but unjustified, the courts have refused wages for the period of such illegal strike. The Constitution Bench of the Supreme Court in *Syndicate Bank & Anr. v. K. Umesh Nayak*, AIR 1995 SC 319 has held that the right of the workmen to receive strike wages is only when the strike is not only legal but also justified. As a corollary, where the strike is illegal or unjustified, the workmen

would not be entitled to strike wages. In addition, the courts have held that whenever workmen resort to the use of force, violence or acts of sabotage during the strike period, they would render themselves disentitled to claim wages for the strike period (*Crompton Greaves Ltd. v. Workmen*, AIR 1978 SC 1489). Likewise, where the demand of the striking workmen are not of an urgent or serious nature, the workmen will not be entitled to strike wages (See - *Fertilizer Corporation of India Ltd.* (supra)).

16. In the present case, we can legitimately proceed on the basis that CGHS is a public utility service. Nevertheless, notice for strike was given by the Employees' Association. However, at the same time, the strike by the Employees' Association cannot be treated as justified. On a number of occasions, the Apex Court as well as this Court have condemned the action of employees in such public utility service, particularly providing medical services, to go on strike. When the doctors of All India Institute of Medical Sciences (AIIMS) had threatened to go on strike in the year 2002, *suo moto* motion was taken by this Court with following objective in mind :-

“2. Taking note of the observations of the Apex Court in *Surjeet Singh Vs. State of Punjab and Others*, 1996 (2) Supreme 11, it was felt that the right to life enshrined under Article 21 of the Constitution of India, would include the right against denial of treatment or even from being prevented from availing the services of any doctor or any other member of the staff from attending to patients and rendering medical assistance to them. In doing so, we also relied upon the judgment in *Vincent v. Union of India*, AIR 1987 SC 990; *Consumer Education and Research Centre and Others Vs. Union of India and Others* 1995 SCC (3) 42; and *Paschim Banga Khet Mazdoor Samity and Others Vs. State of West Bengal and Another*, (1996) 4 SCC 37. Learned Additional Solicitor General Sh. R.N. Trivedi

was also requested to assist the Court in this matter being one of social importance and relevance.”

17. After hearing the parties, the Court pronounced the judgment dated 20.5.2002, which is reported as *Court on its own Motion v. All India Institute of Medical Sciences*, 2007 VII AD (Del) 530. Reading of this judgment reveals that the Court was fully aware of ordinary right of the employees to agitate their grievances by way of peaceful action, including resorting to strikes. However, the Court struck a different note insofar as hospitals, which are of public utility service, are concerned and concluded that in such public utilities there should not be any activity in the nature of strike, *dharna* or demonstration, etc. Following extract from that judgment eloquently brings out this message :-

“8. We are conscious of the fact that employees ordinarily also have a right to agitate their grievances by way of peaceful action including collective bargaining and collective action. However, considering the special circumstances of the AIIMS as an Institution and particularly the sensitive nature of such a super-specialty referral hospital requiring the uninterrupted and smooth functioning of each and every sphere of activity as also the space and locational constraints such as ICU/Emergency/Trauma Centre being all located close to the entrance and exist areas, and also Blood Bank facilities, life-saving medicines and devices being required at short notice, as well as unimpeded movement of medical and para-medical personnel having to be ensured at all times, it would be appropriate and in the interest of justice and also in public interest, that there should be no activity in the nature of strike, dharna or demonstration or gherao at, or in, or around the AIIMS at all.

9. The impact of a strike in a hospital is totally different from that in the case of a factory or trading establishment. Ailing patients cannot be left waiting or un-attended. Hospital activity is not the same as the lifeless functioning of machines in a factory, or movement of trading material or other forms of

commerce. Almost all the activities in relation to hospital are such as required constant and incessant attending and care and therefore unlike a factory or trading establishment, the patients cannot be permitted to be deserted by striking staff. Unlike financial losses, the loss of life or limb cannot be recouped. Reference may be made to the judgment of Single Judge of Bombay High Court in *Baratiya Arogya Nidhi Sheth Kantilal C. Parikh General Hospital Vs. Bombay Labour Union* 2001 LLR 587 (Bom HC).

10. Hospitals are also public utility service within the meaning of Industrial Disputes Act. It was also the intention of Parliament, as is envisaged by the 1982 amendment to the definition of 'industry' under the Industrial Disputes Act, that hospitals have been excluded from the scope of definition of industry and from the purview of the Industrial Disputes Act, 1947. Even though the said amendment has not been brought into force but it does reinforce the position that "hospitals" have to be treated as a class apart from "industry".

11. We also draw upon the ratio of the Apex Court decision reported as *Communist Party of India(M) Vs. Bharat Kumar and Ors.*, 1998 (1) SCC 201 taking note of the heightened applicability in the case of a hospital. We may also note that though learned counsel for Respondent No. 4 at one stage did not try to make certain submissions regarding the right to resort to what he described to be milder forms of protest such as "go slow" etc, but on our pointing out that even such type of protest is an anathema to activities involving matter of life and death such as administering of oxygen or transfusion of blood or reviving the heart etc, thereupon learned counsel did not press further that contention."

18. If we adopt the aforesaid parameters, even if the strike can be technically termed as 'legal' under the Act, it was definitely not justified. Therefore, it can be concluded that the petitioners were not entitled to pay for the day they went on strike, i.e. 17.7.2007.

19. In the present case, however, it is treated as *dies non* and break in service. That is not permissible under the provisions of the Act. Whether it was permissible for the respondent to resort to the same

on the application of the provisions of the CCS (Conduct) Rules, is the question.

20. Legal position keeping in view petitioners as Government employees

The petitioners are to be treated as ‘workmen’. Nevertheless, they are Government servants as well. There is also no dispute that they are governed by the CCS (Conduct) Rules. Rule 7 of this Conduct Rules prohibits such Government servants to resort to demonstrations and strike and read as under :-

“No Government servant shall –

- (i) engage himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of Court, defamation or incitement to an offence, or
- (ii) resort to or in any way abet any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Government servant.”

Government of India has also issued instructions under the aforesaid Rule, which are to the following effect :-

“Rule 7(ii) of the Central Civil Services (Conduct) Rules, 1964, provides that no Government servant shall resort to or in any way abet in any form of strike in connection with any matter pertaining to his service or the service of any other Government servant. Instances have come to the notice of Government where employees resort to various methods of protests for redress of grievances, some of which are tantamount to strike. References have been received seeking clarification whether certain acts are covered under the definition of ‘strike’ and if so, whether action can be taken against such employees for violation of the Conduct Rules.

It is, therefore, clarified that ‘strike’ means refusal to work or stoppage or slowing down of work by a group of employees acting in combination and includes –

- (i) mass abstention from work without permission (which is wrongly described as “mass casual leave”);

- (ii) refusal to work overtime where such overtime work is necessary in the public interest;
- (iii) resort to practices or conduct which is likely to result in or results in the cessation or substantial retardation of work in any organization. Such practices would include, what are called, 'go-slow', 'sit down', 'pen down', 'stay in', 'token', 'sympathetic' or any other similar strike; as also absence from work for participation in a Bandh or any similar movements.

Government servants who resort to action of the above kind violate Rule 7(ii) of the Central Civil Services (Conduct) Rules, 1964, and disciplinary action can be taken against them.”

21. Thus, if the CCS (Conduct) Rules are to be applied to the petitioners (without reference to the provisions of the Industrial Disputes Act), resorting to strike by them amounted to 'misconduct'. However, no disciplinary action was taken. Instead, orders are passed under clause (ii) of FR 17-A of the Fundamental Rules. This Rule makes the following reading :-

“F.R. 17-A. Without prejudice to the provisions of Rule 27 of the Central Civil Services (Pension) Rules, 1972, a period of an unauthorized absence –

- (i) In the case of employees working in industrial establishments, during a strike which has been declared illegal under the provisions of the Industrial Disputes Act, 1947, or any other law for the time being in force;
- (ii) In the case of other employees as a result of action in combination or in concerted manner, such as during a strike, without any authority from, or valid reason to the satisfaction of the competent authority; and
- (iii) In the case of an individual employee, remaining absent unauthorizedly or deserting the post,

shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examination, for which a minimum period of continuous service is required.

EXPLANATION 1. – For purposes of this rule, “strike” includes a general, token, sympathetic or any similar strike, and also participation in a bundh or in similar activities.”

22. Submission of the petitioner, however, is that clause (i) of FR 17-A would apply. Here comes the moot question, namely, what would be the consequences in case of a Government employee who is governed by the Conduct Rules, but at the same time is “workmen” in an industrial establishment.
23. We have already highlighted various provisions of the Industrial Disputes Act relating to strikes and have also mentioned the distinction between justified/unjustified and legal/illegal strike. It would be useful at this stage to quote the observations of the Supreme Court in various cases on right to strike, while dealing with the aforesaid provisions. In the case of *Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha*, (1980) 1 LLJ 137, while construing the provisions of Sections 23(A), Justice Krishna Iyer , observed:

“ It looks strange that the pendency of a reference on a tiny or obscure industrial dispute and they often tend too long- should block strikes on totally unconnected yet substantial and righteous demands. The constitutional implications and practical complications of such a veto of a valuable right to strike often leads not to industrial peace but to seething unrest and lawless strikes.”

The Supreme Court has thus held that the right to strike is an important weapon in the armour of workers as a mode of redress.

24. Therefore, in so far as industrial workmen covered by the definition of workmen under the Industrial Disputes Act are concerned, it cannot be said that there are no statutory provisions governing strikes. It would be necessary to clarify here that for a person to be governed by Industrial Disputes Act, he should be a workman within the meaning of Section 2(s) of the Act and the establishment in which he is working should be 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act. The position that emerges is that:

(a) A workman covered by the Industrial Disputes Act will have right to strike and there are statutory provisions regulating such strikes.

(b) Even Government employees or employees of Government undertakings within the meaning of Article 12 of the Constitution, who are workmen, would be governed by the provisions of the Industrial Disputes Act and may have right to strike.

(c) Non-workmen in private sector may not resort to strike as no labour legislation is applicable and they are not protected by any law.

(d) The Government employees of such departments which are not 'industry', would have no such legal/statutory right to go on strike.

(e) The employees of those Government establishments and public sector undertakings who are outside the definition of

`workmen ' would be governed by the Conduct Rules which prohibit resort to strike by such workmen and makes it a misconduct.

25. At this stage, it would be necessary to refer to the judgment of the Apex Court in *T.K. Rangarajan* (supra), which is the basis adopted by the Tribunal for upholding the order of *dies non*. The Supreme Court in *T.K. Rangarajan's* case examined these issues under three heads:-

- A. There is no fundamental right to go on strike.
- B. There is no legal/statutory right to go on strike.
- C. There is no moral or equitable justification to go on strike.

We are concerned with 'B' above.

Holding that there was no legal/statutory right to go on strike, the court in *T.K.Rangarajan's* case observed as under:

“Para 18: There is no statutory provision empowering the employees to go on strike.

Para 19: Further, there is prohibition to go on strike under the Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as “the Conduct Rules”), Rule 22 provides that “no Government servant shall engage himself in strike or in incitements thereto or in similar activities.” Explanation to the said provision explains the term `similar activities'. It states that “for the purpose of this rule the expression `similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called “hunger strike” for similar purposes. Rule 22-A provides that “no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises- (a) during office hours on any working day; and (b) outside office hours or on holidays, save with the prior

permission of the head of the Department or head of office, as the case may be.”

26. It appears that the court has made two observations :(a) there is no statutory provision empowering the employees to go on strike and (b) there is, rather, a specific prohibition to go on strike in so far as Conduct Rules relating to Tamilnadu Government servants are concerned. There is no dispute as far as proposition (b) is concerned.
27. However, first observation that there is no statutory provision empowering the “employees to go on strike” has to be read in the context of non-workmen Government employee. In view of the provisions of Trade Unions Act and Industrial Disputes Act, the aforesaid observations are to be restricted to non-workmen category or where the workmen are employed in a Government establishment which cannot be treated as “industry.” In view of our aforesaid discussion, we are of the opinion that in the present case employees of the petitioner No.1 Association, who were admittedly “workmen” and were employed in an establishment it will satisfy the requirement of “industry” as per the Constitution Bench Judge in the case of *Bangalore Water Supply and Sewerage Board Vs. A.Rajappa*, AIR 1978 SC 548, the matter is to be examined in the light of provisions contained in the Industrial Disputes Act. Thus, when these workmen went on strike, which was unjustified strike, the petitioners may not be entitled to any wages. However, as the procedure contained in Sections 22 to 25 of the Act was followed, it was not illegal. Nor has it been declared illegal by any authority under the Act. Therefore, at

the same time in so far as FR 17-A is concerned, it is Clause (i) thereof would be applicable and not Clause (ii) because of simple reason that the members of the petitioner No.1 Association are working in industrial establishment. As a consequence, the period of strike cannot be treated as *dies non*. Orders dated 19.11.2007 treating 17.7.2007 as *dies non* with break of service, therefore, cannot stand the judicial scrutiny. These orders are accordingly set aside.

28. In the impugned judgment of the Tribunal the matter as not enquired into in the aforesaid perspective. The said judgment accordingly does not deal with the subject-matter correctly. Allowing this writ petition partly we hold that the members of the petitioner Association who had gone on strike on 17.7.2007 shall not be entitled to any wages for that day. However, at the same time 17.7.2007 shall not be treated as *dies non* with break in service.

29. This writ petition is disposed of in the aforesaid terms with no orders as to costs.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

May 04, 2009
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