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BUCKINGHAM AND CARNATIC CO. LTD.

v.

WORKERS OF THE BUCKINGHAM AND CARNATIC CO. LTD.

[MEHR CHAND MAHAJAN, DAS and BHAGWATI JJ.]

Indian Factories Act (XXV of 1934), s. 49-B—Industrial Disputes Act (XIV of 1947), s. 2 (q)—Employees stopping work for a few hours by concerted action—Whether "strike"—Continuity of service, whether interrupted—Loss of right to holidays with pay.

Where the night-shift operatives of a department of a textile mills stopped work from about 4 p.m. up to about 8 p.m. on a certain day, the apparent cause of the strike being that the management of the mills had expressed its inability to comply with the request of the workers to declare the forenoon of that day as a holiday for solar eclipse, and it was found that the stoppage of work was the result of concerted action:

Held (i) that the stoppage of work fell within the definition of a "strike" in s. 2 (q) of the Industrial Disputes Act, 1947;

(ii) that the strike was an illegal strike as the textile mills was a public utility industry and no notice had been given to the management, even though the refusal to work continued only for a few hours; and

(iii) that the continuity of service of the workers was interrupted by this illegal strike and they were not entitled to claim holidays with pay under s. 49-B (1) of the Indian Factories Act, 1934.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 89 of 1952. Appeal by special leave from the Judgment dated June 27, 1951, of the Labour Appellate Tribunal of India at Calcutta in Appeals Nos. 94 and 142 of 1950 arising out of the Award of the Second Industrial Tribunal, Madras (published in the Fort St. George Gazette, Madras, dated October 3, 1950).

N. C. Chatterjee (*S. N. Mukherjee,* with him) for the appellant.

S. C. C. Anthoni Pillai (*President, Madras Labour Union*) for the respondents.

1952. December 2. The Judgment of the Court was delivered by MAHAJAN J.

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MAHAJAN J.—This is an appeal by special leave from a decision dated 27th June, 1951, of the Labour Appellate Tribunal of India at Calcutta in appeals Nos. 94 and 142 of 1950, arising out of the award of the Second Industrial Tribunal, Madras.

The relevant facts and circumstances giving rise to the appeal are as follows: On 1st November, 1948, 859 night shift operatives of the carding and spinning department of the Carnatic Mills stopped work, some at 4 p.m., some at 4-30 p.m., and some at 5 p.m. The stoppage ended at 8 p.m. in both the departments. By 10 p.m. the strike ended completely. The apparent cause for the strike was that the management of the Mills had expressed its inability to comply with the request of the workers to declare the forenoon of the 1st November, 1948, as a holiday for solar eclipse. On the 3rd November, 1948, the management put up a notice that the stoppage of work on the 1st November amounted to an illegal strike and a break in service within the meaning of the Factories Act (XXV of 1934) and that the management had decided that the workers who had participated in the said strike would not be entitled to holidays with pay as provided by the Act. This position was not accepted by the Madras Labour Union. The Madras Government by an order dated the 11th July, 1949, made under section 10(1) (c) of the Industrial Disputes Act (XIV of 1947), referred this dispute along with certain other disputes to the Industrial Tribunal, Madras. The adjudicator gave the award which was published in the Gazette on 12th October, 1950. By his award the adjudicator found that there could be little doubt that the stoppage of work by the night shift workers on the night of the 1st November, 1948, was a strike, that it was an illegal strike, since the textile industry is notified as a public utility industry and there could be no legal strike without a proper issue of notice in the terms prescribed by the Industrial Disputes Act. No such notice had been given. In view of this finding he upheld the view of the management that the continuity of service of the workers was broken by the interruption

caused by the illegal strike and that as a consequence the workers who participated in such strike were not entitled to annual holidays with pay under section 49-B (1) of the Factories Act. He, however, considered that the total deprivation of leave with pay ordered by the management was a severe punishment and on the assumption that he had power to scrutinize the exercise of the discretion by the management in awarding punishment, reduced the punishment by 50 per cent. and held that the workers would be deprived of only half their holidays with pay. The decision of the management was varied to this extent.

The Mills as well as the Union appealed against this decision to the Labour Appellate Tribunal. That Tribunal upheld the contention of the Mills that the adjudicator had no power to interfere with and revise the discretion of the management exercised by it under section 49-B (1). It also upheld the contention of the Union that what happened on the night of the 1st November did not amount to a strike and did not cause any interruption in the workers' service. This is what the Tribunal said:—

"It would be absurd to hold that non-permitted absence from work even for half an hour or less in the course of a working day would be regarded as interruption of service of a workman for the purpose of the said section. We are inclined to hold that the stoppage of work for the period for about 2 to 4 hours in the circumstances of the case is not to be regarded as a strike so as to amount to a break in the continuity of service of the workman concerned."

In the result the appeal of the Union on this point was allowed and it was ordered that holidays at full rates as provided for in section 49-A of the Factories Act will have to be calculated in respect of the operatives concerned on the footing that there was no break in the continuity of their service by the stoppage of work on 1st November, 1948.

In this appeal it was contended on behalf of the Mills that on a proper construction of section 49-B (1)

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of the Factories Act (XXV of 1934) the management was right in its decision that the continuity of service was broken by the interruption caused by the illegal strike and that the workers were not entitled to annual holidays with pay under the said section inasmuch as they would not have completed a period of twelve months' continuous service in the factory, and that the non-permitted absence as a result of concerted refusal to work even for 2 to 4 hours in the course of a working day amounts to an illegal strike and consequently an interruption of service of a workman for the purpose of section 49-B.

In our judgment, this contention is well founded. Section 49-B provides—

"Every worker who has completed a period of twelve months continuous service in a factory shall be allowed, during the subsequent period of twelve months, holidays for a period of ten, or, if a child, fourteen consecutive days, inclusive of the day or days, if any, on which he is entitled to a holiday under sub-section (1) of section 35.....".

"*Explanation.*—A worker shall be deemed to have completed a period of twelve months continuous service in a factory notwithstanding any interruption in service during those twelve months brought about by sickness, accident or authorized leave not exceeding ninety days in the aggregate for all three or by a lockout, or *by a strike which is not an illegal strike,* or by intermittent periods of involuntary unemployment not exceeding thirty days....."

It is clear that the benefit of this section is not available in cases where the interruption in service is brought about by an illegal strike. Section 2 (q) of the Industrial Disputes Act (Act XIV of 1947) defines "strike" as meaning—

"a 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."

The adjudicator found on the evidence and circumstances of the case that there was concert and combination of the workers in stopping and refusing to resume work on the night of the 1st November. He observed that the fact that a very large number of leave applications was put in for various reasons pointed to the concerted action and that the application given by the workers and their representatives also indicated that they were acting in combination both in striking and refusing to go back to work on the ground that they were entitled to leave for the night shift whenever a half a day's leave was granted to the day shift workers. He further held that the refusal of the workers to resume work in spite of the attempts made by the officers and their own Madras Labour Union representatives indicated that they were not as a body prepared to resume work unless their demand was conceded.

In our opinion, the conclusion reached by the adjudicator was clearly right and the conclusion cannot be avoided that the workers were acting in concert. That being so, the action of the workers on the night of the 1st November clearly fell within the definition of the expression "strike" in section 2(q) of the Industrial Disputes Act. We have not been able to appreciate the view expressed by the Appellate Tribunal that stoppage of work for a period of two to four hours and such non-permitted absence from work cannot be regarded as strike. Before the adjudicator the only point raised by the Union was that it was a spontaneous and lightning strike but it was not said by them that stoppage of work did not fall within the definition of "strike" as given in the Act. It cannot be disputed that there was a cessation of work by a body of persons employed in the Mills and that they were acting in combination and their refusal to go back to work was concerted. All the necessary ingredients, therefore, of the definition exist in the present case and the stoppage of work on 1st November,

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1948, amounted to a strike. It was not a case of an individual worker's failure to turn up for work. It was a concerted action on the part of a large number of workers. The Appellate Tribunal was thus in error in not regarding it as a strike and it had no discretion not to regard what in law was a strike as not amounting to a strike. If it cannot be denied that the stoppage of work on 1st November, 1948, amounted to a strike, then it was certainly an illegal strike because no notice had been given to the management, the Mills being a public utility industry.

It was contended by the President of the Union, who argued the case on behalf of the workers, that the Factories Act had no application to this case, because by a notification of the Government of Madras dated 23rd August, 1946, the Buckingham and Carnatic Mills had been exempted from the provisions of Chapter IV-A of the Act and the provisions of sections 49-A and 49-B were not therefore attracted to it and that no substantial question of law in respect to the construction of the section fell to be decided by this Court and that being so, this Court should not entertain this appeal under article 136 of the Constitution. This contention has no validity. The Mills were granted exemption from the provisions of Chapter IV-A of the Factories Act because their leave rules were in accordance with the provisions of Chapter IV-A of the Factories Act. These rules being in similar terms, the decision of the matter depends on the construction of the rules and this involves a substantial question of law.

Reliance was next placed on section 49-A of the Factories Act which provides that the provisions of the new Act would not operate to the prejudice of any rights which the workers were entitled to under the earlier rules and it was argued that under the leave rules of the Mills which prevailed prior to the coming into force of the Factories Act, the workers were entitled to privilege leave and there was no provision in those rules similar to the one that has been made in section 49-B or in the new rules and that the Mills

had no right to deprive them of leave by reason of the strike. This contention cannot be sustained because section 49-A (2) of the Factories Act has no application to the case of the Carnatic Mills in view of the notification dated 23rd August, 1946.

Lastly, it was urged that the stoppage of work on 1st November, 1948, was not a concerted action on the part of the workers and that several workers in their own individual capacity wanted leave on that date. In our opinion, in view of the facts and circumstances detailed in the adjudicator's award this contention cannot be seriously considered. We concur in the view of the facts taken by the adjudicator that the action of the 859 workers on the night of 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 benefit of holidays that they would have otherwise got under the rules.

The learned counsel for the appellant undertook on behalf of the management *ex gratia* that it would condone the default of the workers on 1st November, 1948, and the cessation of work on that night would not be treated as depriving them of the holidays under the rules and we appreciate the spirit in which this undertaking was given and hope that the workers would also take it in that spirit.

The result is that the appeal is allowed, and the decision of the Labour Appellate Tribunal on this point is set aside. In the circumstances of this case we make no order as to costs.

Appeal allowed.

Agent for the appellant: *S. P. Varma.*