MANAGEMENT, ESSORPE MILLS LTD. A

*v.*

PRESIDING OFFICER, LABOUR COURT AND ORS.

(Civil Appeal No. 2567 of 2006)

APRIL 4, 2008 B

**[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]**

*Industrial Disputes Act, 1947 — s.22(1) – Notice of strike – Issued on 14th March, 1991 stating that the strike will commence on or after 24th March, 1991 – Validity of – Held: Not valid – The strike notice did not satisfy the requirement of advance notice stipulated u/s 22(1) since six weeks' time before date of strike not given.* C

**On 14th March, 1991, the Workers' Union served a strike notice on the management of Appellant-textile mills purportedly under s.22(1) of the Industrial Disputes Act, 1947 stating that "strike would commence on or after 24th March, 1991". Respondents-workmen were dismissed from service after holding of disciplinary enquiry. They filed petitions under s.2-A of the Act for re-instatement with back wages and continuity of service. The Labour Court held that the strike was illegal, however, in purported exercise of powers under s.11-A of the Act it substituted the punishment of dismissal by order of discharge and awarded compensation of Rs.50,000/- to each workman. High Court allowed the Writ Petition filed by Respondents on ground of non compliance of s.33(2)(b) of the Act and directed their re-instatement with full back wages and continuity of service. It held that a copy of the strike notice dated 14th March, 1991 was sent to the Conciliation Officer and, therefore, conciliation proceedings were pending on the date of dismissal and since the dismissal was without the approval of the Conciliation Officer in terms of s.33 of the Act, the same was illegal. Appellant filed writ appeals which were dismissed.** D E F G

 H

A In appeal to this Court, it was contended by the appellant that the High Court failed to appreciate that the strike notice issued on 14th March, 1991 stating that the strike will commence on or after 24th March, 1991 i.e. (just 10 days notice) did not satisfy the requirement of advance B notice stipulated u/s 22 (1), therefore, it was not a valid notice of strike, consequently, in the eye of law there could be no commencement of conciliation proceedings in terms of s.20(1) as a result of the said notice. It was contended that since no conciliation proceeding was C pending at the time of dismissal of workmen, s.33 was not attracted and there was no question of seeking permission of the Conciliation Officer in such a case.

The Appellant contended that the High Court failed to appreciate that in terms of s.33-A for not obtaining D permission of the Conciliation Officer under s.33, the only legal consequence provided is that the Conciliation Officer shall take the complaint of contravention of the provisions of s.33 into account in mediating in and promoting the settlement of such industrial dispute and therefore the E order of dismissal in any event was not illegal. It was contended that there was no complaint made to the Conciliation Officer in this case and the Conciliation officer, unlike the Labour Court or an Industrial Tribunal, has no power of adjudication and therefore, he could not set aside F the order of dismissal which remained valid.

Allowing the appeal, the Court

HELD:1.1. S.22 of the Industrial Disputes Act, 1947 aims at stalling action for illegal strike. It pre-supposes a G notice before the workmen resorted to strike. The notice has to be given to the employer. Different stages enumerated by Section 22(1) of the Act are : (i) Advance notice of 6 weeks; (ii) 14 days given to the employer to consider the notice; (iii) the workmen giving the notice cannot go on strike before the indicated date of strike and H

**(iv) Pendency of any conciliation proceedings. [Paras 12, 15, 20] [1156-C, D, E; 1157-A; 1159-C, D]**

**1.2. The workmen cannot go on strike within six weeks notice in terms of s.22(1)(a) and 14 days thereafter in terms of s.22(1)(b). Earlier illegal strike is not remedied by a subsequent strike as provided in s.22. [Paras 19, 20] [1159-C-D]**

**1.3. In the instant case, the date of notice is 14.3.1991 and the proposed strike was on 24.3.1991. Six weeks' time before the date of strike was not given. Therefore, on the face of it, it cannot be treated to be a notice as contemplated under s.22(1)(a). If no notice is given to the employer, the effect of it is that he is not aware of the proceedings. The conciliation proceedings must be one meeting the requirements of law. [Paras 17, 18] [1157-D-E; 1158-G-H; 1159-A-B]**

**1.4. In this case, no conciliation proceedings were pending under sub-section (4) of Section 22. The stand of the Respondents that simultaneously notice is required to be given to the Conciliation Officer in Form 'L' and, therefore, s.20 has full application is clearly untenable because Form 'L' refers to the Central Rule 71 and not s.22. There is nothing in s.22 which requires giving of intimation or copy of the notice under s.22 to the Conciliation Officer. [Paras 13, 16] [1158-F; 1159-C-D]**

*Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma* **(2002 (2) SCC 244) and** *Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad* **(1999 (6) SCC 275) – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2567 of 2006.

From the final Order dated 31.12.2003 of the High Court of Judicature at Madras in W.A. No. 4088 and 4089/2003

P.P. Rao, C. Manohar Gupta, V. Ramasubramanian,

A Anshuman Ashok, Purushottam S.T., Fabin A.K., Sahar Bakht and Abhishek Gupta for the Appellant.

S. Gurukrishna Kumar, C.K. Chanrasekaran and S.R. Setia for the Respondents.

B The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the order passed by a Division Bench of the Madras High Court dismissing the Writ Appeals filed by the appellant.

C 2. Background facts as projected by the appellant are as follows:

Respondents 2 to 23 went on illegal strike from 8.11.1990. Respondent No.15 and one S.L. Sundaram who had died in the meantime were the first to strike work in the blow room D resulting in the stoppage of entire operation of the appellant's textile mills. Other workmen followed. All the 55 workers who resorted to strike were suspended. Even after their suspension, respondents 2 to 17 remained in the premises causing obstruction. All the 55 workers were charged for mis-conduct. E Out of them 34 apologized and they were taken back into service. But subsequently, three more also apologized and they too were allowed to join duty. The respondents 2 to 23, however, did not relent. On 14.3.1991 the General Secretary of the Tamil Nadu Panchalai Workers' Union served a strike notice on the F management purportedly under Section 22(1) of the Industrial Disputes Act, 1947 (in short the 'Act') stating that "strike would commence on or after 24.3.1991" and on 8th and 24th April and 13th May, 1991 the respondents 2 to 23 were dismissed from service after holding a disciplinary enquiry. Petitions were filed G under Section 2-A of the Act for re-instatement with back wages and continuity of service. The Labour Court by its award dated 24.1.1994 held that the strike was illegal. However, in purported exercise of powers under Section 11-A of the Act the Labour Court substituted the punishment of dismissal by order of discharge and awarded compensation of Rs.50,000/- to each H

workman. The award was challenged by the appellant as well as the workmen before the High Court. On 5.8.2000 a learned Single Judge of the High Court allowed the Writ Petition No.8389 of 1995 filed by the respondents 2 to 23 on the ground of non compliance of Section 33 (2)(b) of the Act and directed re-instatement of the workmen with full back wages and continuity of service. He took the view that a copy of the strike notice dated 14.3.1991 was sent to the Conciliation Officer and, therefore, conciliation proceedings were pending on the date of dismissal and since the dismissal was without the approval of the Conciliation Officer in terms of Section 33 of the Act the same was illegal. Reliance was placed on a decision of this Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. V. Ram Gopal Sharma* (2002 (2) SCC 244). The appellant's Writ Petition No.10239 of 1999 against the alteration of punishment was dismissed. On 30.12.2003 by the impugned judgment a Division Bench of the High Court dismissed the Writ Appeals holding that the judgment of this Court did not make any distinction between the proceeding pending before the Conciliation Officer and those pending before an Industrial Tribunal.

3. On 21.2.2004 the Special Leave Petitions were filed and when the matter came up for hearing on 20.3.2006 after notice, a Bench of this Court suggested certain terms for amicable settlement as set out in the order of said date. The appellant agreed to the terms proposed, but the respondents 2 to 23 did not agree.

4. The basic stand of the appellant is as follows:

The High Court failed to appreciate that in the absence of a valid notice of strike in terms of Section 22(1) there can be no commencement of conciliation proceedings in terms of Section 20(1) of the Act. Section 22(1) prohibits a strike in a public utility service, in breach of contract, without giving to the employer advance notice of six weeks. It prohibits strike (a) within the notice period of six weeks, (b) within 14 days of giving such

A notice, (c) before the expiry of the date of strike specified in such a notice, (d) during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings. The strike notice issued on 14-3-1991 stating that the strike will commence on or after B 24-3-1991 i.e. (just 10 days notice) does not satisfy the requirement of advance notice stipulated u/s 22 (1). Therefore, it is not a valid notice. Consequently, in the eye of law there was no commencement of conciliation proceedings as a result of the said notice.

C 5. On the dates of dismissal of workmen no conciliation proceeding was pending in the eye of law. Unless a conciliation proceeding was pending at the time of dismissal of workmen, Section 33 will not be attracted and there is no question of seeking permission of the Conciliation Officer in such a case.

D 6. The High Court failed to appreciate that in terms of Section 33-A for not obtaining permission of the Conciliation Officer under Section 33, the only legal consequence provided is that the Conciliation Officer shall take the complaint of contravention of the provisions of Section 33 into account in E mediating in and promoting the settlement of such industrial dispute. Therefore the order of dismissal in any event was not illegal. There was no complaint made to the Conciliation Officer in this case.

F 7. The Conciliation officer, unlike the Labour Court or an Industrial Tribunal, has no power of adjudication. Therefore, he cannot set aside the order of dismissal. The dismissal remains valid.

8. Stand of the respondents 2 to 23 on the other hand is G that the appellant did not raise the plea that there was no conciliation proceeding pending at the time of dismissal of the workmen. It is stated that there was deemed conciliation. Before a learned Single Judge the primary issue revolved on the question as to whether any notice of conciliation had been issued H by the Conciliation Officer and, therefore, there was pendency

of conciliation proceeding. Learned Single Judge held against the appellant relying on a decision of this Court in *Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad* (1999 (6) SCC 275) holding that once strike notice is issued under Section 22 of the Act, conciliation proceeding is deemed to have been commenced and no further notice from the Conciliation Officer is necessary.

9. The stand that the notice of strike does not meet the requirements of Section 22 of the Act is also not tenable. Section 22(1)(d) of the Act provides that no person employed in a public utility service shall go on strike in breach of contract during the pendency of any conciliation proceedings before the Conciliation Officer and 7 days after the conclusion of the proceedings. The Conciliation Officer shall hold the conciliation proceedings when notice under Section 22 of the Act has been given. Under Section 12(3) if a settlement is arrived at during conciliation proceedings, a report is to be sent by the Conciliation Officer to the Government together with the settlement. If no settlement is arrived at the Conciliation Officer has to send the failure report under Section 12(4) of the Act and Government has to refer the dispute under Section 12(5). Unlike in the case of non public utility service, the concept of deemed conciliation has been statutorily provided in the case of public utility service so that workmen did not go on strike during pendency of the conciliation proceedings. When strike notice under Section 22 of the Act has been given the Conciliation Officer is mandatorily required to hold the conciliation proceedings under Section 20(1) of the Act.

10. The purpose of providing for deemed conciliation is to prevent dis-location of public utility service. The object of enacting sub-sections (a) and (b) of Section 22(1) is for the purpose of ensuring that workers do not rush into strike and give a chance to the Conciliation Officer to resolve the dispute.

11. It is therefore clear that there was a deemed conciliation proceeding when the notice under Section 22 in Form 'O' of the

A Tamil Nadu Industrial Disputes Rules, 1958 (in short the 'Rules') has been issued. Several alternatives are provided in Section 22(1) and sub-clauses (a) to (d) are the alternatives which is clear from the use of the expression "or". As such the time limit set out in either one of the clauses (a) or (b) would therefore
B have to be read disjunctively which is clear from sub-clause (c) which provides that strike shall not be undertaken "before the expiry of the date of strike specified in any such notice as aforesaid". It is further submitted that decision in *Jaipur Zila's* case (supra) has full application.

C 12. A few facts which have relevance need to be noted.

The notice was given about the proposed strike after the strike. Undisputedly, the workers resorted to strike on 8.11.1990. The notice was given on 14.3.1991. Different stages enumerated
D by Section 22(1) are as follows:

(i) Advance notice of 6 weeks.

(ii) 14 days given to the employer to consider the notice;

(iii) the workmen giving the notice cannot go on strike
E before the indicated date of strike;

(iv) Pendency of any conciliation proceedings.

13. In this case no conciliation proceedings were pending under sub-section (4). Sub-section (4) of Section 22 states that
F the notice of strike referred to in sub-section (1) has to be given in such manner as may be prescribed. The Central Rule 71 prescribes the manner in which the notice has to be given and the notice is in Form 'L'. The notice as mandated under Section 22 has to be given to the employer.

G 14. Learned counsel for the respondent relied on Section 20 which deals with commencement and conclusion of proceedings. According to the High Court the conciliation proceeding is deemed to have been commenced on the date on which the notice of strike under Section 22 is received by
H the Conciliation Officer.

15. The High Court seems to have lost sight of the crucial words "notice of strike or lock out under Section 22". Section 22 pre-supposes a notice before the workmen resorted to strike. The notice has to be given to the employer. Sub-section (6) of Section 22 also has relevance because within a particular time period after receipt of the notice under sub-section (1) he shall report to the appropriate Government or to such authority as the Government may prescribe.

16. Stand of the respondents is that simultaneously notice is required to be given to the Conciliation Officer in Form 'L' and, therefore, Section 20 has full application. This plea is clearly untenable because Form 'L' refers to Rule 71 and not Section 22. There is nothing in Section 22 which requires giving of intimation or copy of the notice under Section 22 to the Conciliation Officer. At the stage of notice under Section 22 there is no dispute.

17. The date of notice is 14.3.1991 and the proposed strike was on 24.3.1991. Therefore, on the face of it, it cannot be treated to be a notice as contemplated under Section 22(1)(a). The notice in question reads as follows:

"By Registered Post

The Strike notice issued by the employees under Rule 59(1)

From:
The General Secretary,
Tamil Nadu Panchalal Workers Union,
39, 11th Cross Road,
Tatabath,
Coimbatore-12

To:
The Management,
Essorpe Mills,
Saravanapatti (Post),
Coimbatore-35.

Sir,

We have decided to strike work at Essorpe Mills, Saravanampatti Post, Coimbatore. Therefore, we are giving advance notice of strike under the provisions of Section 22(1) of the Industrial Disputes Act, 1947 (Central Act No.14 of 1947). We would inform you as per Section 22(1)(c) that the strike will commence on or after 24th March, 1991.

We have enclosed our demands under Rule 29 of the Chennai Industrial Disputes Rules, 1958.

Always in service to the Nation
Sd/- K. Palanichamy,
The General Secretary,
Tamil Nadu Panchalai Workers Union

Copy to:

1. Commissioner of Labour, Chennai
2. Addl. Commissioner of Labour, Coimbatore
3. Deputy Commissioner of Labour, Coimbatore
4. Asstt. Commissioner of Labour (Conciliation-2), Coimbatore
5. The Commissioner of Police, Coimbatore
6. The Collector, Coimbatore
7. The Commissioner cum Secretary, Labour and Recuirtment Board, Fort. St. George, Chennai
8. The Inspector of Factories, Coimbatore"

18. In the notice it is stated that the strike will commence on or after 24.3.1991. Obviously, six weeks' time before the date of strike was not given. In this case notice is 14.3.1991 and the proposed strike was on or after 24.3.1991. The inevitable conclusion is that the notice cannot be treated to be one under Section 22. *Jaipur Zila's* case (supra) has no application if the notice given is not in accordance with law. If no notice is given to the employer, the effect of it is that he is not aware of the

proceedings. Obviously, the conciliation proceedings must be one meeting the requirements of law. Here, no notice in terms of Section 22 of the Act was there. A

19. Somewhat unacceptable plea has been taken by the respondents 2 to 23 that in terms of Section 22(1)(b) after 14 days of giving the notice, the workmen can go on strike. If this plea is accepted six weeks' time stipulated in Section 22 (1)(a) becomes redundant. The expression "giving such notice" as appearing in Section 22(1)(b) refers to the notice under Section 22(1)(a). Obviously, therefore, the workmen cannot go on strike within six weeks notice in terms of Section 22(1)(a) and 14 days thereafter in terms of Section 22(1)(b). B C

20. The expression "such notice" refers to 6 weeks advance notice. Earlier illegal strike is not remedied by a subsequent strike as provided in Section 22. If such stand is accepted it will go against the requirement of Section 22 which aims at stalling action for illegal strike. D

21. Above being the position, the judgments of learned Single Judge as well as that of the Division Bench cannot be sustained and deserve to be set aside which we direct. Notwithstanding the same the fair approach indicated by the appellant by accepting the decision of this Court by order dated 20.3.2006 can be given effect to. It is open to respondents 2 to 23 or any of them to comply with the terms indicated. E

22. The appeal is allowed to the extent indicated above. There will be no order as to costs. F

B.B.B. Appeal allowed.