Q & A

I run a factory in Mumbai and have employed around 150 workers in my factory. I have also got standing orders framed and certified for my factory. I want to recruit around 25 new workers in factory whose nature of job would be the same as that of the 150 workers already working. However, I wish to apply a different set of standing orders to these new recruits. Please let me know whether in respect of these 25 new workers, a different set of standing orders can be drafted.

Please note that the standing orders have statutory force in terms of the Industrial Employment (Standing Orders) Act, 1946 ("Standing Orders Act"). While the standing orders are in force it is not permissible for the employer to seek their statutory modification or draft a different set of standing orders so that there can be one set of standing orders in respect of certain employees and another for the rest. The said view was also endorsed by the Hon'ble Supreme Court in U.P.E. Supply Co. vs. T.N. Chatterjee 1972 AIR 1201, wherein it was held that the scheme and object of the Standing Order Act clearly shows that it is not intended by the legislature that different set of conditions should apply to employees depending upon whether a workman was employed before the coming into force of the standing orders or after.

In view of aforesaid, I am of the view that the standing orders already certified by you shall apply to these 25 new workers you want to recruit since you cannot have different set of standing orders for workers carrying out the same nature of work in the same undertaking. However, you are free to modify your existing standing order as per the procedure laid down in Standing Order Act.

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We are a private company engaged in business of cloth manufacturing. We are in the process of buying a cloth manufacturing unit with 225 workers working in the said unit. We are offering employment to all 225 workers on the same terms and condition on which they are presently working. However, several workers don't want to continue with their employment and are demanding compensation from us. Please let us know whether these workers are entitled to any compensation or not.

Section 25-FF of the Industrial Dispute Act, 1947 ("ID Act"), protects the interests of workmen in case of transfer of ownership or management of an undertaking from one employer to another, whether by agreement or by operation of law. Though the ID Act does not prohibit termination of employment of any workman pursuant to transfer of undertaking, it however, stipulates that such workman should be given adequate notice and compensation prior to termination of his employment. In case of transfer of an undertaking, every workman who has been in continuous service of the entity to be transferred, for not less than one year immediately before the date of the transfer, is entitled to notice and compensation as if the workman has been retrenched, except in certain circumstances / cases. A workman affected by the transfer of ownership or management of an undertaking would not be considered as retrenched if:

a) the service of the workman has not been interrupted by such transfer;

b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to his immediately before the transfer; and

c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

Thus, if the services of a workman have not been interrupted by the transfer of undertaking and the new employer offers employment to him / her on the same terms including emoluments as beneficial as the ones available to him / her prior to the transfer, he / she will not be considered as retrenched. In absence of the aforesaid factors, the termination of employment of a workman will be considered as retrenchment and the previous employer would be liable to provide

the concerned workman at least one (1) month's notice in writing or wages in lieu thereof and retrenchment compensation equivalent to fifteen (15) days average pay for every completed year of continuous service or any part thereof in excess of six (6) months.

However, if the employee is not ready to accept the offer by his new employer on the same terms including emoluments as beneficial as the ones available to him / her prior to the transfer, then he / she will be entitled to get retrenchment compensation from the new employer. In this regard, reference must be made to the judgment of the Hon'ble Supreme Court in Sunil Kr. Ghosh and Ors. vs. K. Ram Chandran and Ors. (2011) 14 SCC 320, wherein it was observed that "It is settled law that without consent, workmen cannot be forced to work under different management and in that event, those workmen are entitled to retirement/retrenchment compensation in terms of the Act. In view of the same, we are of the view that the workmen are entitled to the benefit of such direction and it is the obligation on the part of the Management".

In view of the law laid down in Sunil Kr. Ghosh and Ors. vs. K. Ram Chandran and Ors., we note that the employees who don't want to join your services are entitled to retrenchment compensation as per the provision of ID Act.

One of my clients has floated a company under the Companies Act, 1956 for printing and publishing a Kannada newspaper and within a short time it has reached the status of No. 1 in Karnataka. Recently, the Company has appointed the Editor of the newspaper as one of the Directors on the Board of the Company. I am bit confused whether such an act by the Company is lawfully correct as a person being an Editor of the newspaper published by the very Company can be one of the Directors on the Board.

While legally there is no bar in editor of a newspaper being appointed as a director on the board of the company that owns the paper, many, including myself, would agree that morally and ethically it may not be appropriate for an editor of a news paper or a news channel to take up directorship. HC

Wages During Strike Period Legal Interpretation

Collective bargaining is a legally recognized and sanctioned tool with the employees to negotiate better working environment for themselves. Strike is an extreme form of collective bargaining where employees collectively refuse to undertake work unless their demands are conceded by the management. Strike is regarded as one of the most potent and extreme weapon with the employees in their struggle against the employer for getting their grievance(s) redressed. Right to strike is an important weapon in the armoury of workers and has been specifically recognized in the Indian legal framework. Though not raised to the high pedestal of fundamental right, it is recognized mode for resolving the grievances of the workers. However, right to strike is not absolute and the law specifies the manner and procedure by which employees can resort to the extreme measure of striking work.

As per Section 2 (q) of the Industrial Disputes Act, 1947 ("ID Act"), strike means "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." As stated, the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. These restrictions are found in sections 10(3), 10A(4A), 22 and 23 of the ID Act. Any strike which is commenced or declared in contravention of Section 22 or 23 or is continued in contravention of an order made under Section 10(3) or 10A(4A), is considered illegal as per Section 24 of the ID Act. Thus, Section 24 of the ID Act makes it abundantly clear that if a strike does not contravene the provisions of ID Act, same can be termed as a legal strike.

However, if the strike is illegal, workers guilty of illegality are liable to be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both as stipulated under Section 26 of the ID Act. Besides the penalty prescribed under Section 26 of the ID Act, another consequence of an illegal strike is the denial of wages to the workers involved in such strike. Since, the ID Act is silent upon the

wages during the period of strike the issue of denial of wages during the period of strike has been under constant judicial scrutiny in various courts or tribunals across the country. The aforesaid issue has been discussed by the Hon'ble Supreme Court in Crompton Greaves vs. the Workmen (1978) 3 SCC 155, where the Hon'ble Court held that "It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statutes. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case." Besides the above the Hon'ble Court also observed that "It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period." However, in case of Bank of India vs. T.S. Kelawala (1990) II LLJ 39, the Hon'ble Supreme Court endorsed a different view by observing that "where the contract, Standing Orders or the service rules/regulations are silent on the subject, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed."The Hon'ble Court further held that "...whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. The liability to lose wages does not either make the strike illegal as a weapon or deprive the workers of it. When workers resort to it, they do so knowing full well its consequences." Therefore, the Hon'ble Court in the aforesaid judgment while reserving the right of the workman to go on strike was of the view that workers are not entitled to wages during the strike period irrespective of the fact that the strike is legal or illegal.

The question of deduction of wages during the period of strike was also dealt with by the three judge bench of the Hon'ble Supreme Court in Management of Chitrakulam Tea Estates (P) Ltd. vs. Its Workman AIR 1969 SC 998. In the present case the Hon'ble Court held that the factory workers are entitled to wages for the day on which they were on strike since the strike was neither illegal nor unjustified.

Further, in Syndicate Bank v. K. Umesh Nayak, AIR 1995 SC 319, the question which came up for consideration before the Constitution Bench of the Hon'ble Supreme Court was whether the workman who proceeded on strike, whether legal or illegal, are entitled to wages for the period of strike. The necessity to refer this issue to a constitution bench arose due to the apparent conflict in the views expressed by the Supreme Court in Management of Chitrakulam Tea Estates (P) Ltd. vs. Its Workman and Crompton Greaves vs. The Workmen on the one hand and Bank of India v. TS. Kelawala on the other. In the first two cases, viz., Churakulam Tea Estate and Crompton Greaves, the view taken up by Court was that the strike must be both legal and justified to entitle the workmen to wages for the period of strike whereas in TS. Kelawala the Court had taken the view that the employees are not entitled to wages for the period of strike irrespective of the fact that whether the strike is legal or illegal. The Hon'ble Court in the present case held that the question whether the strike was justified or not was not raised in T.S. Kelawala's case and therefore, the further question whether the employees were entitled to wages if the strike is justified was neither discussed nor answered. The first two decisions were not cited while deciding the other case and hence there was no occasion to consider the said decisions there. The essence of the first two decision is that if the strike is legal but unjustified or it is illegal but justified, the employees would not be entitle for wages for the period of strike. The view is that for such entitlement the strike must be both legal and justified. Since the question whether the employees are entitled to wages, if the strike is justified did not fall for consideration in T.S. Kelawala's case, there is only an apparent conflict in the decisions. Thus, the Supreme Court in the present case held that "to be entitled to wages for the strike period, the strike has to be both legal and justified. Whether the strike is legal or justified are questions of fact to be decided on evidence by the industrial adjudicator. The Hon'ble Court further observed that "while the legality of the strike is based on examining whether there is breach of the provisions of the Industrial Disputes Act, the question of justifiability of strike has to be examined by taking into consideration factors such as service conditions, nature of demands, the cause which led to the strike, urgency of the cause or the demands of the workmen, reason for not resorting to the dispute resolving machinery under the Act, etc."

Therefore, on a conjoint reading of the aforesaid observations, it is profusely clear that where a strike is not in contravention of any statutory provision and consequently is not illegal nor is unjustified, there is no reason to deprive the workmen of their wages during the period of strike. However, if the strike is either illegal or unjustified, the workmen are not entitled to any wages for the period of strike. Therefore, by virtue of number of cases in which the Hon'ble Supreme Court has repeatedly upheld this legal position, it is evident that in order to be entitled for wages during the period of strike, strike has to be both legal as well as justified.

Moreover, whether a particular strike is justified or not depends upon the facts and circumstances of each case by taking into consideration factors such as service conditions, nature of demands, the cause which led to the strike etc. A strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Additionally, it is not only the end but the means also that must be reasonable and just. HC