

Ex.22.

Presented on dt.16-04-2015.

Admitted on dt.16-04-2015.

Disposed on dt.25-04-2018.

Duration : Yrs.03 : Mths.00 : Days.09.

Before the Hon'ble Presiding Officer of Labour Court

at Nadiad,

Ref. (L.C.N.) no.61/2015.

First Party ::

C. M. Smith and Sons Ltd.,
Dasrathvadi, Court road,
Nadiad.

V/S

Second Party::

Sanjay Maganbhai Vaghela,
Add.: Gamanpura, Chaklasi,
Taluka: Nadiad, District: Kheda.

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For First Party : Ld. advocate Mr. A. S. Shah.

For Second Party : Ld. advocate Mr. A. S. Vyas.

: Award :

(1). The first party herein is the company named C. M. Smith & Sons Ltd., whereas the second party is the employee. The above first as well as second party for sake of brevity and deciding this industrial dispute are referred respectively, as '*the opponent*' and '*the applicant*'.

(2). The present industrial dispute was forwarded for judicial decision to this Court by Assistant Labour Commissioner, Nadiad, as the conciliation proceedings before him could not fructify, *vide* letter no.1579 dtd.6-4-2015, as per order no.KHR.2008/IDR/10(1)/45/15 and the terms of reference of this industrial dispute is as under:

“Whether Sanjay Maganbhai Vaghela should be reinstated on his original post along with continuity of service and back wages?”

(3). The applicant has filed statement of claim at Ex.4. The facts of it can be encapsulated as under:-

The applicant has stated that he was working as a worker since last 7 years in the establishment of the opponent and his salary was Rs.230/- per day. He has stated that his service record was clean and neat as well as he was performing his service with total efficiency and honesty. He was a permanent workman and has performed service of more than 240 days in each year of his service.

The applicant has stated that earlier the union for workmen in the establishment of the opponent was Akhil Gujarat General Mazdoor Sangh and he was also a member of that union. But since last some period the said union was not showing any interest in raising or settling the legal demands of workmen such as regular salary, over time salary, converting temporary employees to regular employees, giving benefits of provident funds to workmen and abolition of the illegal contract system. So the workmen had decided to form a new union. The applicant has stated further that the company hasn't paid the bonus for the year 2013-14 to the workmen till completion of the festival of Diwali. The above stated union has not even made any efforts for the same so on dt.21-11-2014, the applicant along with 100 other workmen

had united and started taking legal advice for their due salary and bonus. This act of theirs wasn't liked by the management of the company and so on dt.20-11-2014, dt.22-11-2014, dt.23-11-2014 and dt.24-11-2014, when the applicant had went for reporting at his duty he wasn't allowed to enter the main gate of the company. So the applicant along with the other workmen had met the officers of company namely, Natubhai Gohel, Anjanaben Gohel, etc. They have asked the workmen that why have they taken advice of other legal advisor instead of their union? They have further asked the workmen to leave the legal advisor and if they have joined some other union than to resign from it. Further it was stated that if the workmen gives such thing in writing than only they will be taken back in service and till the moment they does not resign from the other union they will not be kept on work in the company. So the applicant has stated that he will continue taking advice from the new legal advisor since it is their right so the management hasn't allowed him to join work from dt.24-11-2014 and has illegally and unreasonably terminated him from the service. Than after the applicant has submitted complaints for their due salary and bonus to the Government Authorities so the bonus for the year 2013-14 was paid by the opponent in the month of December 2014.

The applicant has stated that after his termination, the work which was performed by him is taken under the name of workmen of the company as a bogus labour contractor and by doing so the company is committing unfair labour practice. The applicant has stated that it is the say of the opponent that he and other co-workers has held an illegal strike in the company but in fact, he or the other workmen hasn't held any strike nor has taken any part in any so-called strike. The management hasn't issued any notice for the so-called strike nor has sought any explanation for the same. By putting false allegation of strike the management has adopted unfair labour practice. The management did not liked that he as

well as the other workmen have joined another union so they were terminated from service in an illegal and unreasonable manner. The earlier union of workmen was supporting the management in its right and wrong decision but the new union / legal advisor did not give any support to the company, so the management had illegally terminated the service of workmen by committing unfair labour practice. The applicant has stated that if the management reinstates them with back wages from the date of termination along with all the ancillary benefits then they are ready to join the work. The applicant has stated that the management has terminated him from service on dt.24-11-2014 without any reason or without providing any opportunity for his defense as well as without issuing any charge sheet or holding departmental inquiry. He wasn't issued any notice nor was provided notice pay or retrenchment compensation and neither had the company issued any notice for the so-called strike.

The applicant has stated that after his termination he is unemployed and has made several efforts for getting service but he hasn't succeed. He is maintaining his family by borrowing money. The applicant has prayed for the relief of declaring the termination of his service to be illegal and unreasonable as well as the opponent reinstates him with continuity of service along with back wages and all the ancillary benefits. The applicant has even prayed for Rs.10,000/- as cost of this proceedings from the opponent.

(4). The opponent company has submitted its written reply at Ex.7, wherein it has denied the contentions of statement of claim and has raised a preliminary issue stating that no dispute as defined in sec.2(k) or sec.10 has arisen between them so the reference case is required to be rejected. The applicant has received the bonus for which he was entitled before dt.30-11-2014.

The opponent company has stated that their main office

is situated at Nadiad and it has even other branches. There are more than one union of the workmen in the company. The company is an Automobile Engineering Industry, wherein the production depends upon the orders received from different companies. If more orders are received than the work is done in three shifts. Three types of workmen are working in the company namely, apprentice under Apprentice Act, permanent employees and temporary employees. The permanent workmen are employed on basis of minimum average production. Since the company is an automobile engineering industry so the orders received in each year varies and there may be rise or downfall in it. The opponent has stated that at present the world is passing through the period of recession.

The opponent has stated that the applicant was working on temporary basis and he was performing work on basis of necessity. He has performed service of less than 240 days in last 12 months. The company provides the benefits to its employee for which they are entitled. The applicant was working as a daily wager and was paid salary at the end of month on basis of number of working days.

The company provides all the benefits to its workmen for which they are entitled and pays them salary at the end of month on basis of their working days. At present due to worldwide recession the opponent company is also not an exception so it could not receive its due amount within time from the market. In some cases they does not get their due amount even after longer period and the chances for getting that due amount has also become negligible. Therefore the economic situation of the company has even shaken and it is very much difficult to continue the activity in the company but the management is making strenuous efforts so that the company does not gets closed. If the company gets closed than huge numbers of workmen will become unemployed. To

eliminate such a situation the management is making alternative arrangements such as taking loans, taking money on interests and advance so that the company runs smoothly as well as it's electricity bills are also paid within time period. If the electricity bills are not paid within time period than the electric supply may get disconnected which in result will cause an immediate effect on the company by stoppage of production. The electricity bills also comes in figures of crores of rupees so arrangement for that amount is also done with great difficulties. Along with it other efforts are made for paying salaries of workmen but in some circumstance delay is caused in payment of salaries. The workmen are conveyed about this fragile and worst situation of the company by holding many meetings.

The opponent has stated that the concerned workman in collusion with the other workmen of machine shop department have suddenly stopped the work on Sunday on dt.29-12-2013 at about 12'o clock, without submitting any notice and have gone on strike by sitting on the road in the compound of company. They have created an atmosphere of fear by threatening the staff employees from entering the company. The application for the same was submitted by the company to Town Police Station. The notices for illegal strike were also put on the notice board on various dates from dt.29-12-2013 till dt.6-1-2014 and the copies of same were even sent to Assistant Labour Commissioner and Deputy Director of Industrial Safety & Health department, Nadiad. The Assistant Labour Commissioner has recorded the statement of the company on dt.31-12-2013. The workmen have went on strike for the reason of their due salary of November 2013. Due to the interference of Assistant Labour Commissioner, the concerned workman and other workmen have again joined their duties. Since the workmen were on illegal strike so as per the principles of 'no work no pay' they were not paid the salary for the period when they were on strike.

The company has also anyhow paid the bonus for the year 2013-14 within time period by getting money. During such fragile situation of the company two employees, named, Hanif Mohamadhussain Khalifa and Jagdishbhai Jethabhai Chuahan, were transferred to other place *vide* letter dtd.19-11-2014. As per this transfer letter they were to report for work at Bhumel on dt.20-11-2014 in the first shift. Since these two employees were transferred, so the other five employees named, Dineshbhai Shanabhai Chauhan, Makdumali Barkatali Saiyad, Harishkumar Shankarbhai Prajapati, Dipakbhai Shankarbhai Pateliya and Bhupendrakumar Shankarbhai Parmar, in collusion with each other as well as by instigating other workmen and creating an atmosphere of threat, have gone on a sudden strike on dt.20-11-2014 in the first shift, without informing the company. The workmen as per their routine course have come to report at their duties but these five workmen by standing at the main gate of the company, have instigated the workmen and created an atmosphere of fear as well as have not allowed the other workmen to report at their duties. When the officers of the company came to know about it, they rushed at the main gate and have asked the workmen to report at their duty without keeping any fear so many workmen have reported to their duty but some workmen who were in collusion with those five employees haven't reported to their work. So by doing such an act the above stated workmen have held the strike and the notices for the same were published by the company on the notice board.

On the same day i.e. on dt.20-11-2014 in the second shift, the workmen have come with their lunch box for joining their duties, but before beginning of the second shift the said five employees have again come at the main gate of the company and have instigated the workmen of second shift by not allowing them to report on their duties. When the officers of the company came to

know about the same they again rushed to the main gate and have asked the workmen not to get instigate by the words of those employees and those five employees will get the company closed, which will result in loss of their livelihood. Due to these words of the officials, some workmen came out of the fear of those employees and have reported on their duties but some workmen fell to the words of those five employees and have joined the strike, so notices were published by the company.

On dt.21-11-2014 there was weekly off in the company but on dt.22-11-2014, in the first and second shift some workmen were not allowed to report on their duties by instigating them and creating an atmosphere of fear even though most of the workmen came out of that fear and had join their duties. The same thing has happened on dt.23-11-2014 in the first as well as second shifts and so some workmen were stopped from reporting on their duties whereas some have reported to their duties on basis of courage given by the officers of company.

The applicant in this manner has joined the strike with those five employees and has stopped reporting to his duty. Since the workmen in collusion with each other have held the strike and stopped coming at work so various notices, totaling about 83 in numbers, were published by the company from dt.20-11-2014 till dt.4-3-2015 and the copies of the same were even sent to Assistant Labour Commissioner. Even though the applicant along with other workmen haven't report to their duties so the company has dismissed the above stated five employees from service *vide* letter dtd.24-11-2014. The company has stated that during the conciliation proceeding it has offered the concerned workman to join his duty but his representative has stated that if all the workmen along with dismissed employees are taken back on work with back-wages than only the applicant will join his duty. So in this manner the applicant in collusion with other employees has held an

illegal strike on dt.29-12-2013 and has voluntarily stopped his work. Again on dt.20-11-2014 without issuing any notice they have held an illegal strike in collusion with each other and have stopped to report on their duties.

Since the applicant along with other workmen have stopped coming at their duties hence for the purpose of carrying out specified production and for livelihood of other employees, the opponent company has made an alternative arrangement.

The applicant isn't terminated by the company even though he has raised a false complaint before Assistant Labour Commissioner, wherein also the company has shown its readiness for compromise but due to the rigid conduct of the applicant the compromise wasn't possible. The opponent has prayed to reject the reference case of the applicant and has prayed for granting them Rs.10,000/- as compensatory cost from the applicant.

The opponent has stated that in the alternative if the hon'ble Court comes to a conclusion that the applicant is terminated without adopting legal procedure than in that situation they are ready to held the departmental inquiry before this Court for the illegal strikes which were held on dt.29-12-2013 and dt.20-11-2014.

(5). The following evidence is produced from the applicant side.

: Oral Evidence :

1	Ex.11.	Affidavit of chief examination of applicant.
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The applicant hasn't produced any documentary evidence in this case and has filed evidence closure pursis at Ex.12.

(6). The opponent hasn't produced any separate evidence in this case but both the parties have submitted joint pursis at Ex.15,

16 and 18, praying that the evidence which is produced by the opponent side in the allied Ref. Case no.18/2015, wherein the opponent side has examined two witness namely, Mr. Natwarlal Ishwarbhai Gohel, at Ex.22 and Mr. Pragnesh Pradhumanbhai Sutthar, at Ex.116 as well as documents produced by the opponent side below the list of Ex.21 and Ex.115, may even be considered in this case. The opponent has submitted evidence closure pursis at Ex.21.

(7). The Ld. advocate from both the sides have argued orally. They have relied on bunch of citations in support of their arguments. These arguments and citations of the respective side will be discussed at relevant stage.

(8). The issues which are relevant and related to the controversy of the present industrial dispute, were framed as per order passed on dt.25-5-2016 below Ex.nil, the application of the opponent side. The English version of these issues is as below:

- (1). Whether the second party / applicant has performed continuous service in the establishment of the opponent as provided in sec.25(B)?
- (2). Whether the applicant was terminated from service since he had joined the new union?
- (3). Whether the applicant has voluntarily abandoned his service by joining the strike as pleaded by the opponent?
- (4). Whether the applicant is illegally terminated from his service?
- (5). Whether the applicant is entitled for the relief of reinstatement on his original post along with continuity of service and back-wages? or Is he

entitled for any other relief?

(6). What order?

(9). **The answers to the above issues are as below :**

(1). Affirmative.

(2). Negative.

(3). Partly affirmative.

(4). Negative.

(5). Partly affirmative. The applicant is directed that within sixty days of publication of the award, he has to report on his duty in the opponent company by submitting a written application for the same. Further if the applicant complies with this initial direction and reports to work within prescribed period of sixty days than the opponent company has to reinstate him on his original service with continuity of service but if the applicant fails to comply with this initial direction than he will not be entitled for getting reinstated on his service in the opponent company. In any case the applicant will not be entitled for any amount of back-wages for the interregnum period.

(6). As per final order.

(10). **Reasons for issues :**

(10.1). Before going to the disputed questions of the above issues let us take a brief note of the admitted facts in this case.

(1). The applicant has stated that he was a permanent worker in the establishment of the opponent. The opponent side in

their written statement has stated that the applicant was working on temporary basis and he used to perform work whenever it was required. He was working as a daily wager and was paid salary at the end of the month on basis of his working days. Further the Ld. advocate of the opponent side during the stage of argument has submitted the lists of workmen classifying them on basis of permanent and temporary status of their service. The name of applicant is shown at serial no.19 in the list of temporary workmen and his joining date is shown as dt.1-3-2013. So on basis of the admitted facts it proved that the applicant was a temporary workman in the establishment of the opponent.

(2). At this juncture looking to the citation, the case before ***hon'ble Supreme Court*** between ***Devinder Singh v/s Municipal Corporation, Sanaur***¹, wherein it is held that whether a person is part-time employee or a contractual employee or a temporary employee or casual employee all are workman as provided in sec.2(s). It is held that the source of employment, the method of recruitment, the terms and conditions of employment / contract of service, the quantum of wages and mode of the payment are not at all relevant for deciding whether or not a person is a workman within the meaning of sec.2(s). So looking to the above ratio of the judgment and the definition of 'workman' i.e. sec.2(s) in the I. D. Act, the applicant of this case comes under the purview of this definition. Therefore the applicant is a workman as defined in the Act.

(10.2). Issue no.1::

(1). As per the issue no.1 the applicant has to prove his continuous service as provided in sec.25-B of the I. D. Act. As per

¹ Devinder Singh v/s Municipal Corporation, Sanaur reported in 2011 AIR SCW 3455.

the provisions of **sec.25(B)**, the definition of continuous service, the workman / applicant, in the instant case should have performed uninterrupted service as provided in sec.25-B(1) or should have actually worked under the opponent for minimum 240 days during a period of twelve calendar months preceding the date of the termination as provided in sec.25-B(2).

(2). The applicant has stated that he was working since last 7 years as a worker in the establishment of the opponent and had even performed service of more than 240 days in each year of his service. The opponent in their written statement has stated that the applicant has performed service of less than 240 days in the last 12 months. Further looking to the list of temporary employees which is submitted by the Ld. advocate of the opponent side at the stage of argument, the joining date of applicant is shown as dt.1-3-2013. Further the opponent side was directed to produce the muster rolls and wage registers for the period from 2005 to 2015 but the opponent side has only produced the copy of wage registers for the period from July 2013 till March 2016 in the allied Ref. Case no.18/2015 and that too contains the details of permanent employees only. The opponent side hasn't produced wage registers which are relevant for this case. So looking to the date of joining as stated by the opponent side, the service of the applicant is proved to be continuous as per the provisions of sec.25(B-1) of the Act. Therefore answer to issue no.1 is given in "***affirmative***".

(10.3). Issues no.2 to 4::

(1). The facts of issues no.2 to 4 are interconnected so to avoid the repetition of facts and for the sake of convenience they are discussed together. Further looking to the pleadings of respective sides the burden of issues no.2 and no.4 lies on the

applicant side whereas that of issue no.3 lies on the opponent side.

(2). As per the plea of the applicant earlier there was a union named Akhil Gujarat General Mazdoor Sangh for the workmen working in the establishment of the opponent and he was even a member of that union, but since last some period the said union was not showing any interest in raising before the company or settling with the company, the legal demands of workmen such as regular salary, over time salary, converting temporary employees to regular employees, giving benefits of provident funds and abolition of the illegal contract system. So the workmen have decided to form a new union. The company hasn't even paid the bonus for the year 2013-14 to him and other workmen till completion of the festival of Diwali. The above stated union has not even made any efforts for the same, so on dt.21-11-2014, the applicant along with 100 other workmen had got united and have started taking legal advice for their due salary and bonus. This act of theirs wasn't liked by the management and so on dt.20-11-2014, dt.22-11-2014, dt.23-11-2014 and dt.24-11-2014, when he had went for reporting at his duty he wasn't allowed to enter the main gate of the company. So the applicant along with the other workmen had met the officers of company namely, Natubhai Gohel, Anjanaben Gohel, etc. The officers have asked them that why have they taken advice of other legal advisor instead of their union? They have even asked to leave that advisor and if they have joined some other union than to resign from it. Further they have stated that if they give such thing in writing than only they will be taken in service and till the moment they doesn't resign from other union they will not be kept on work in the company. So the applicant has replied to them that he will continue to take advice from the new legal advisor since it is his right so the management has not allowed him to work from dt.24-11-2014 and has illegally and unreasonably terminated him

from the service.

(3). On the contrary, the opponent has pleaded that due to worldwide recession the company could not get its due amount within time from the market, therefore the economic situation of the company was even shaken and it was very much difficult to continue the activity in the company but the management is making strenuous efforts so that the company does not gets closed. Along with that other efforts are done for paying salaries of workmen but in some circumstance delay is caused in payment of salaries. The workmen are conveyed about this fragile and worst situation of the company by holding many meetings.

The opponent has stated that the concerned workman in collusion with the other workmen of machine shop department have suddenly stopped the work on Sunday on dt.29-12-2013 at 12'o clock without submitting any notice and have held strike by sitting on the road in the compound of company. They have created an atmosphere of fear by threatening the staff employees from entering in the company. The notices for this illegal strike were put on the notice board on various dates from dt.29-12-2013 till dt.6-1-2014 and the copies of same were sent to Assistant Labour Commissioner, Deputy Director of Industrial Safety and Health department, Nadiad. The workmen were on strike for the reason of due salary of November 2013. Due to the interference of Assistant Labour Commissioner, the concerned workman and other workmen have again joined their duties. Since the workmen were on illegal strike so as per the principles of 'no work no pay' they were not paid the salary for that period. The company anyhow by getting money has paid the bonus for the year 2013-14 within time period. During such fragile situation of the company, two employees named Hanif Mohamadhussain Khalifa and Jagdishbhai Jethabhai Chauhan, were transferred *vide* letter dtd.19-11-2014. As per this

transfer letter they were to report for work at Bhumel on dt.20-11-2014 in the first shift. Since these two employees were transferred, the other five employees namely, Dineshbhai Shanabhai Chauhan, Makdumali Barkatali Saiyad, Harishkumar Shankarbhai Prajapati, Dipakbhai Shankarbhai Pateliya and Bhupendrakumar Shankarbhai Parmar, in collusion with each other, by instigating other workmen and creating an atmosphere of threat, have gone on sudden strike on dt.20-11-2014 in the first shift without informing the company. The workmen as per their routine course have come to report at their duties but these five workmen have instigated the other workmen at the main gate of the company and by creating an atmosphere of fear haven't allowed other workmen to report at their duties. When the officers of the company came to know about it, they have rushed at the main gate and have asked the workmen to report at their duties without keeping any fear so many workmen have reported to their duty but some workmen who were in collusion haven't report to their work. So by doing such an act the above stated workmen have held the strike and the notices for the same were published by the company on the notice board. In the same manner in the second shift of that day as well as on dt.22-11-2014 & dt.23-11-2014, in the first and second shift also, the same act was repeated. So the applicant has joined the strike with those five employees and has stopped reporting to his duty. Since the workmen in collusion with each other had held the strike and have stopped coming at work so various notices, totaling about 83 in numbers, were published by the company from dt.20-11-2014 till dt.4-3-2015 and the copies of the same were even sent to Assistant Labour Commissioner, even though the applicant along with other workmen haven't report to their duties, so the company has dismissed the above stated five employees from their service *vide* letters dtd.24-11-2014. The company has stated that during the conciliation proceeding it has

offered the concerned workman to join his duty but his representative has stated that if all the workmen along with dismissed employees are taken back on work with back-wages than only the applicant will join his duty. So in this manner the applicant in collusion with other employees has held an illegal strike on dt.29-12-2013 and has voluntarily stopped his work. Again on dt.20-11-2014 without issuing any notice they have held an illegal strike in collusion with each other and have stopped coming on their duties.

(4). The Ld. advocate of the opponent side has argued that the applicant of the instant case isn't terminated from the service by the company but he has joined an illegal strike and has voluntarily stopped to report at his duty. In support of this argument he has relied on the citation the case before ***hon'ble Rajasthan High Court*** between ***Narendra Singh Solanki v/s raw and Finishing Production***², wherein it is held that one of the essential ingredients for retrenchment is that termination of the service of the workman for any reason whatsoever by the employer. So it contemplates an act on part of the employer which puts an end to the service of workman. The Ld. advocate has argued that in the present case the service of applicant isn't terminated by the company but he has gone on strike so no retrenchment is done in this case.

(5). So looking to the above pleadings of the opponent side only five employees namely, Dineshbhai Shanabhai Chauhan, Makdumali Barkatali Saiyad, Harishkumar Shankarbhai Prajapati, Dipakbhai Shankarbhai Pateliya and Bhupendrakumar Shankarbhai Parmar were dismissed by the company since they were the main culprits behind the act of holding a sudden strike and were behind

² Narendra Singh Solanki v/s Raw and Finishing Production reported in 2001-III-LLJ (Suppl) 304.

the act of instigating the other workmen to go on a strike. The applicant of the instant case wasn't dismissed from the service.

The opponent side has produced the order of dismissal of services dtd.24-11-2014 of the above stated five employees respectively, at Ex.33 to Ex.37 in the allied Ref. Case no.18/2015. The parties to this case have jointly prayed to considered the evidence of the opponent side which is produced in the said allied Ref. Case no.18/2015 in this case as well. The opponent side has even produced the transfer orders dtd.19-11-2014 of two employees named, Hanif Mohamadhussain Khalifa and Jagdishbhai Jethabhai Chauhan, respectively at Ex.31 & Ex.32 in the allied Ref. Case no.18/2015. The applicant has stated in his cross examination that he wasn't provided written order for termination of his service. So from these documentary evidence as well as the admission of the applicant in his cross examination, it is not proved that the applicant was officially or unofficially discharged from service by the opponent.

(6). Now it is to be discussed that whether the applicant was not allowed to enter the main gate of the company for reporting to his work on dt.20-11-2014, dt.22-11-2014, dt.23-11-2014 and dt.24-11-2014, since he had joined the new union. At this juncture a judicial note is required to be taken of the fact that along with the present case of the applicant, 90 cases of the other workmen working in the establishment of the opponent were also forwarded for adjudication to this Court. The defense of the opponent side in all of these cases was the same i.e. the workmen have gone on strike and the company has only dismissed the five employees who were playing main part behind the act of strike. The applicant of this case is unable to prove that he was terminated or dismissed from his service. He has not even stated the name of the new union in which he has joined as a member. Further the applicant has

pleaded that the officers of management namely, Natubhai Gohel and Anjanaben Gohel has asked him and other workmen to leave the new advisor and resign from the new union. The opponent side has examined the said person named Natubhai Gohel as their witness in the allied Ref. Case no.18/2015 at Ex.22 but during his cross examination the applicant side hasn't asked any question related to this pleading. Hence in this circumstance from the evidence which has come on record it can be said that except the five employees namely, Dineshbhai Shanabhai Chauhan, Makdumali Barkatali Saiyad, Harishkumar Shankarbhai Prajapati, Dipakbhai Shankarbhai Pateliya and Bhupendrakumar Shankarbhai Parmar, no other workmen including the applicant were terminated or discharged from the service. Hence in this circumstance when the applicant is not terminated than the question of illegal termination also does not survive. Therefore the answer to issues no.2 and 4 are given in "**negative**".

(7). Now let us discuss the facts related to the issue no.3. As stated earlier the burden for the same is on the opponent side. The opponent side has pleaded that due to worldwide recession the company was passing through a fragile and worst situation so delay was even caused in paying the salary of workmen. Hence for the reason of due salary of November 2013, the workmen have stopped the work on dt.29-12-2013 and have gone on a sudden strike without giving any notice. Than after due to interference of Assistant Labour Commissioner, the workmen have again reported on their duties. The applicant has pleaded that the workmen were not paid the bonus for the year 2013-14 till the end of festival of Diwali but was paid in the month of December 2014 after they have submitted complaints to concerned authorities for the same. The applicant side has produced such complaints for bonus and due salary along with the documentary list of Ex.133 in the allied Ref.

Case no.18/2015. The opponent side has pleaded that they have somehow paid the bonus for the year 2013-14 within limitation period provide by law. So on basis of these rival pleadings, it is an admitted fact that the workmen were not receiving their salary within prescribed period as well as bonus for the year 2013-14 was paid to the workmen in the month of December 2014. The reason behind this delay, as stated by the company, was the ongoing worldwide recession and fragile situation of the company since it was not receiving timely payments from market.

The opponent side has pleaded further that than after on dt.19-11-2014 two employees were transferred at other place hence on dt.20-11-2014 in the first shift, the five employees named, Dineshbhai Shanabhai Chauhan, Makdumali Barkatali Saiyad, Harishkumar Shankarbhai Prajapati, Dipakbhai Shankarbhai Pateliya and Bhupendrakumar Shankarbhai Parmar, have instigated other workmen and have stopped the work by going on sudden strike. They have created an atmosphere of fear and haven't allowed other workmen of machine shop department to report on their duties. They have repeated this act in the second shift of that day as well as in both shifts on dt.22-11-2014 and dt.23-11-2014. When confidence and strength was given to the workmen by the management some workmen have joined their duties. So on dt.24-11-2014 these five employees were dismissed from service but the strike had continued hence almost 83 notices on various dates were put on the notice board as well as its copies were sent to Assistant Labour Commissioner. The applicant has even joined the said strike. So in this manner the applicant in collusion with other employees has held an illegal strike on dt.29-12-2013 and has voluntarily stopped his work. Again on dt.20-11-2014 without issuing any notice they have held an illegal strike in collusion with each other and have stopped coming on their duties.

(8). So as per above pleadings of the opponent side the applicant had joined an illegal strike and has voluntarily stopped his work. It is an admitted fact that individual show cause notice or charge sheet wasn't issued to any of the workmen nor was any departmental inquiry held against any workmen for the above stated reasons. Even the five employees who as per the say of the opponent were the main culprits were dismissed without adopting the said procedure. The opponent has even pleaded that in case this Court comes to a conclusion that the applicant was illegally terminated than in that case they may be permitted to prove the allegations of strike.

(9). So at this stage it is to be decided that even though the employer hasn't held any inquiry against the workmen for alleged misconduct than can he prove those allegations of misconducts against the workman before this court.

(10). At this juncture the citation, the case before ***hon'ble Supreme Court*** between ***Amar Chakravarty & ors. V/s. Maruti Suzuki India Ltd.***³ is required to be referred. It is necessary to quote para 17 of said citation which is as below:

17. In view of the aforesaid position in law, the inevitable conclusion is that when no inquiry is conducted before the service of a workman is terminated, the onus to prove that it was not possible to conduct the inquiry and that the termination was justified because of misconduct by the employee, lies on the management. It bears repetition that it is for the management to prove, by adducing evidence, that the workman is guilty of misconduct and that the action taken by it is proper. In the present case, the services of the appellants-workmen having been terminated on the ground of misconduct, without holding a

³ Amar Chakravarty & ors. V/s. Maruti Suzuki India Ltd. reported in 2011 I CLR 22.

domestic inquiry, it would be for the management to adduce evidence to justify its action. It will be open to the appellants-workmen to adduce evidence in rebuttal. Therefore, the order passed by the Labour Court, shifting the burden to prove issue no.1 on the workmen is fallacious and the High Court should have quashed it.

The underlined portion of above para makes it crystal clear that the opponent company can even prove the allegations against the applicant, which are narrated in their written reply, by adducing evidence before this Court and if the opponent leads evidence and proves the allegations then the employee can produce rebuttal evidence.

The opponent side has relied on the citation which is the case before ***hon'ble Delhi High Court*** between ***Arun Kumar v/s Management of Cable Corum of India***⁴, wherein it is held that the Tribunal can independently come to the conclusion of misconduct without considering findings of the domestic inquiry. The management can terminate services of the workmen without holding an inquiry and can prove the misconduct later on by leading evidence before the Tribunal or Labour Court with the permission of the Court. The Tribunal or Labour Court can determine the misconduct by recording evidence of the parties itself. The opponent side has even relied on the citation of the same High Court, the case between ***Sh. Mohd. Azim v/s Sarv U. P. Gramin Bank***⁵, wherein it is held that it is now settled that even if no inquiry is held by the employer before terminating the services of a worker or if the domestic inquiry held by the management is held to be defective by the Labour Court and the dispute raised by the dismissed workman comes to the Labour Court or Industrial Tribunal for adjudication under the provisions of sec.10 or sec.33 of

4 Arun Kumar v/s Management of Cable Corum of India reported in 2012 LLR 1176 (Delhi).

5 Sh. Mohd. Azim v/s Sarv UP Gramin Bank reported in 2015-II-LLJ-279 (Delhi).

the I. D. Act, the entire controversy between the parties become open for adjudication by the Labour Court or the Industrial Tribunal and both the parties, then, get an opportunity to substantiate their rival stand. In this regard, the Tribunal, in order to satisfy itself about the legality and validity of the order of termination of the workman, has to give an opportunity to the employer and employee to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra. In no case, the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic inquiry has been held or the said inquiry is found to be defective. So as per the ratio of the above judgments also the opponent side can prove the alleged misconduct against the applicant by leading evidence in this case.

(11). Here in the instant case the allegations against the applicant is of joining an illegal strike on the instigation of the five employees and by doing so voluntarily abandoning the work. Before going on to the discussion regarding the allegation of strike it is required to take note of the fact that every right comes with its own duties. The most powerful rights have more duties attached to them. Today, in each country of the globe whether it is democratic or capitalist or socialist, it gives right to strike to the workers. But this right must be the weapon of last resort because if this right is misused, it will create a problem in the production and financial profit of the industry. This would ultimately affect the economy of the country. Today, most of the countries, especially India, are dependent upon foreign investment and under these circumstances it is necessary that countries who seeks foreign investment must keep some safeguard in there respective Industrial laws so that there will be no misuse of right of strike. In India, right to protest is

a fundamental right under Article 19 of the Constitution of India. But right to strike is not a fundamental right but a legal right and with this right, statutory restriction is attached in the Industrial Dispute Act, 1947.

In India unlike America right to strike is not expressly recognized by the law. The Trade Union Act, 1926 for the first time provided limited right to strike by legalizing certain activities of a registered trade union in furtherance of a trade dispute which otherwise breach common economic law. Now days a right to strike is recognized only to limited extent permissible under the limits laid down by the law itself, as a legitimate weapon of Trade Unions. The right to strike in the Indian Constitution set up is not absolute right but it flows from the fundamental right to form union. As every other fundamental right is subject to reasonable restrictions, the same is also the case to form trade unions to give a call to the workers to go on strike and the state can impose reasonable restrictions. In the ***All India Bank Employees Association v. National Industrial Tribunal***⁶, the ***hon'ble Supreme Court*** has held, "the right to strike or right to declare 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 no.4 of Article 19 but by totally different considerations. Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike.

Further the strike as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilized to work hardship to the society at large so as to strengthen the bargaining power. Every

6 All India Bank Employees Association v/s N.I.T. reported in AIR 1962 SC 171.

dispute between an employer and employee has to take into consideration the third dimension, viz. the interest of the society as a whole.

(12). So first of all it is to be decided in the instant case that whether the applicant along with other workmen have gone on a sudden strike on dt.20-11-2014 during the first shift. If reply to this question is in affirmative, then it is to be decided that whether the said strike was an illegal and unjustified strike or not.

Now going on to the first question i.e. whether the applicant along with the other workmen have gone on strike from dt.20-11-2014 onwards, it is required to peruse the evidence which has come on the record of this case. As discussed earlier in issues no.2 & 4, the applicant is unable to prove the fact that he was either legally or illegally terminated from his service by the opponent. The name of the applicant has even continued in the muster roll of the company in the year 2015 during the pendency of the present reference case. The opponent side has produced notices from Ex.40 to 105 in the allied Ref. Case no.18/2015, which were put on the notice board of the company as well as the copies of the same were even sent to the Assistant Labour Commissioner. These notices were put on the notice board of the company from dt.20-11-2014 itself stating that some of the workmen working in the machine shop department of the company have stopped the work in the first shift on dt.20-11-2014 by instigation of some workmen and had an illegal strike. Hence those workmen who will remain on strike will not get salary for the said day as per the principle of 'no work no pay'. The opponent company has examined the witness named Mr. Natwarlal Ishwarbhai Suthar at Ex.22 in the allied Ref. Case no.18/2015. He has stated that he is working on the post of Manager H. R. in the opponent company. He has referred all the above notices in his chief examination and has stated that he

knows the signature of those notices. In his cross examination he has denied the question that such notices were not put on the notice board and has clarified that the copies of these notices were even sent to Assistant Labour Commissioner. The applicant side hasn't challenged these notices by terming them as forged or brought up notices but the Ld. advocate of the applicant side has raised a question that such notices were not sent at the residential address of workmen as well as charge sheets or show cause notices were not issued to the so-called workmen who were on strike. But it is an admitted fact in the instant case that the opponent company hasn't issued individual notices, charge sheets or show cause notices to the concerned workmen and instead those notices were put on the notice board of the company by sending its copies to the concerned authority. Hence on basis of this evidence the genuineness of the notices produced by the opponent side is prove. Further when the applicant isn't terminated from the service by the opponent therefore on basis of the above evidence i.e. the notices of strike which are produced by the opponent side and which are proved from the oral evidence of their witness, it is proved that the applicant along with other workmen of machine shop department have gone on a sudden strike during the first shift from dt.20-11-2014.

(13). Now let us discuss the next question i.e. whether the said strike was an illegal and unjustified strike or not? Under the Industrial Dispute Act, 1947 the grounds and conditions are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal. Now let us discuss the relevant provisions of strike under the I. D. Act.

(13.1). Provisions of strike under the Industrial Dispute Act, 1947:

Section 2(q) of the Act defines the term strike, it says, **"strike" means 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 accept employment.**

The act of the applicant along with the other workmen of suddenly stopping work in the first shift on dt.20-11-2014 falls under the purview of above definition of 'strike'.

(13.2). Whenever employees want to go on strike they have to follow the procedure provided by the Act otherwise their strike is deemed to be an illegal strike. The sec.22(1) of the Industrial Dispute Act, 1947 put certain restrictions on the right to strike for the persons employed in public utility service. In the instant case the opponent company is an automobile engineering industry so it does not fall in the category of public utility service. Further it is to be noted that these provisions do not prohibit the workmen from going on strike but requires them to fulfill certain conditions before going on strike. The Industrial Dispute Act, 1947 does not specifically mention as to who goes on strike. However, the definition of strike itself suggests that the strikers must be persons, employed in any industry to do work.

(13.3). General prohibition of strike:

The provisions of sec.23 are general in nature. It imposes general restrictions on declaring strike in breach of contract in the both public as well as non-public utility services in the following circumstances mainly:

(a) During the pendency of conciliation proceedings before a board and till the expiry of 7 days after the conclusion of such proceedings;

- (b)** During the pendency and 2 month's after the conclusion of proceedings before a Labour court, Tribunal or National Tribunal;
- (c)** During the pendency and 2 months after the conclusion of arbitrator, when a notification has been issued under sub-sec.3(a) of sec.10-A;
- (d)** During any period in which a settlement or award is in operation in respect of any of the matter covered by the settlement or award.

The principal object of this section seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. This section because of its general nature of prohibition covers all strikes irrespective of the subject matter of the dispute pending before the authorities. It is noteworthy that a conciliation proceedings before a conciliation officer is no bar to strike under sec.23.

(13.4). Discussion regarding an Illegal Strike:

[I]. The sec.24 provides that a strike in contravention of sec.22 and sec.23 is illegal. This section is reproduced below:

(1) A strike or a lockout shall be illegal if,

- (i) It is commenced or declared in contravention of sec.22 or sec.23; or
- (ii) It is continued on contravention of an order made under sec.10(3) or sec.10-A(4-A).

(2) Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence all 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 provision of this Act

or the continuance thereof was not prohibited under sub section (3) of section 10 or sub section (4-A) of 10-A.

(3) A strike declared in the consequence of an illegal lockout shall not be deemed to be illegal.

[II]. In the instant case as per the plea of the opponent company, the initial strike was held from dt.29-12-2013 till dt.6-1-2014 and the next strike was started from dt.20-11-2014 during the first shift than the present dispute was raised by the applicant on dt.12-1-2015 which was referred to this Court for adjudication on dt.6-4-2015. The opponent side has stated that during the whole period from dt.20-11-2014 till dt.4-3-2015 they have put 83 notices on the notice board stating to end the strike and report for work else serious action will be initiated against the alleged striking workmen. The copies of said notices were even sent to the Assistant Labour Commissioner, Nadiad and the said notices are produced from Ex.40 to Ex.105, by the opponent side in the allied Ref. Case no.18/2015. So the opponent has even raised a defense during the conciliation proceeding that the workmen have held an illegal strike. Even though no prohibitory order is passed by the appropriate Government u/sec.10(3) of the I. D. Act, restricting the continuance of strike in connection with the dispute which was existing on the date of the reference. Looking to the terms of reference it is a stereotype order without mentioning anything regarding strike. At this juncture it is required to refer the citation, which is relied by the opponent side, the case before ***hon'ble Bombay High Court*** between ***Bharat Petroleum Corporation Ltd. v/s Workmen Employed in the Refinery Division of Bharat Petroleum Corporation Ltd.***⁷, wherein the question which was to be decided was that whether it was a strike resorted by the employees or it was a lockout done by the employer. Therein

⁷ B.P.C.L. v.s Workmen employed in the Refinery Division of BPCL reported in 2001 BLR 221 (Volume 103[2]).

in para 18, the hon'ble High Court has stated regarding the powers and duties of the appropriate Government under such situation at the time of referring the industrial dispute for adjudication. It is required to quote the said para in verbatim which is as below:

18. I, however, fail to understand why the management also kept quiet for a period of about 6 months and did not act in the manner provided under the law. The strike of six months in such a public utility of the refinery has caused tremendous hardship and harassment to the society. The consumers were not getting cooking gas for days and months together and the finger was pointed out at the ongoing strike. The management also simply raised its finger towards the workmen that they were on strike. What causes more concern to me is the total inaction on the part of the Government which utterly failed in taking immediate action in the matter. The first thing, which could be done was to take action under section 10 to refer the industrial dispute between the employer corporation and the workmen for adjudication and then to take prompt decision to prohibit such strike under section 10(3) of the Industrial Disputes Act. The Legislature has given ample powers to the Government to act in every such situation. The Legislature does not expect the Government machinery to be only a silent spectator. It is not that the Central Government or the State Government have never prohibited any strikes or lock outs. It was expected of the Government to have issued prohibitory orders to prevent continuance of the strike or the lock out and it would have referred all the questions for adjudication to the Industrial Tribunal. The Government allowed the society and consumers to suffer endlessly. According to me, the Government is to be blamed for such a situation which was brought about by the erring workmen. (emphasis supplied by me).

In the present case also the appropriate Government could have issued prohibitory orders to prevent continuance of

strike and should have referred all the disputed question for adjudication but such a thing isn't done in this case as well.

[III]. The opponent side has relied on the citation which is the case before ***hon'ble Bombay High Court*** between ***Bharatiya Arogya Nidhi v/s Bombay Labour Union and anr.***⁸, wherein the workers of the hospital has resorted to a sudden strike without giving notice to the hospital management. It was held that it is not necessary for the employer to get first, the declaration of a strike to be illegal and then to initiate a disciplinary action against the striking workmen. The misconduct of going on an illegal strike or abusing, instigating and acting in furtherance thereof is to be decided by the employer. It is for the employer to assess whether the workmen had resorted to a strike legal or illegal. It is not at all necessary to get a declaration from a Court of Law about the legality or otherwise of the strike. So as per the above citation it is for the employer to decide regarding the legality or illegality of the strike. In the instant case the employer has termed the said strike as an illegal strike.

[IV]. So now it is to be decided that whether the said strike was an illegal strike as provided in sec.24(1) or 24(2) of the Act. Since there was no prohibitory order passed by the appropriate Government u/sec.10(3) or sec.10-A(4-A) of the Act so the said strike was not illegal as provided in sec.24(1)(ii) of the Act. The strike is not even an illegal strike as per the principal portion of the provisions of sec.24(2) since the strike was already existing at the time when this industrial dispute was referred to this Court for adjudication. Further since no prohibitory orders was passed in this case as per provisions of sec.10(3) or sec.10-A(4-A) so the second part of proviso to sec.24(2) will not be applicable in this case.

⁸ Bharatiya Arogya Nidhi v/s Bombay Labour Union reported in 2001(II) LLJ 292 (Bom).

Hence now it is to be decided that whether the said strike is an illegal strike as per the provisions of sec.24(1)(i), i.e. whether it was commenced or declared in contravention of sec.22 or sec.23 (*herein this case sec.22 is not relevant since the industrial establishment is not a public utility service*) or whether it is an illegal strike as per first part of the proviso to sec.24(2), since its commencement was in contravention of the provisions of the I. D. Act.

[V]. So now again we have to refer the provisions of sec.23 and more particularly clause (b) of the said section. As per this provisions no workman who is employed in any industrial establishment shall go on strike in breach of contract during the pendency of proceedings before a Labour Court and two months, after the conclusion of such proceedings. Here in the instant case the applicant and the other workmen, whose individual industrial disputes were referred to this Court for adjudication, were already on strike and have even continued their act of strike during the present pending proceeding. So the said act of continuing the strike was in contravention of the above provision hence in this circumstance the strike held by the applicant along with the other workmen turns out to be illegal.

(13.5). Discussion regarding whether the strike was justified or not:

(1). For the discussion on the point as to whether the strike was justified or not it is required to take note of the citation, wherein the constitutional bench of ***hon'ble Supreme Court*** in the case between ***Syndicate Bank v/s K. Umesh Nayak***⁹ has held that a strike may be illegal if it contravenes the provision of sec.22,

⁹ Syndicate Bank v/s K. Umewsh Nayak reported in AIR 1995 SC 319.

23 or 24 of the Act or of any other law or the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the workmen, the cause led to strike, the urgency of the cause or demands of the workmen, the reasons for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules provided for a machinery to resolve the dispute. The resort to strike or lock-out directly is prima facie unjustified. This is, particularly so when the provisions of the law or the contract of the service rules in that behalf are breached. It is required to quote para no.30 of the above judgment which is as below:

30.The question whether a strike or lockout is legal or illegal does not present much difficulty for resolution since all that is required to be examined to answer the question is whether there has been a breach of the relevant provisions. However, whether the action is justified or unjustified has to be examined by taking into consideration various factors some of which are indicated earlier. In almost all such cases, the prominent question that arises is whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lockout is not to be resorted to because the party concerned has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of the rule of "might is right". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the society which can

well await the resolution of the dispute by the machinery provided for the same. The strike or lockout as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to, compel the other party to the dispute to see the justness of the demand. It is not to be utilized to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the Act places additional restrictions on strikes and lockouts in public utility services.

(2). Further looking to the facts of the case which was between **Sadual Textile Mills v/s Their workmen**¹⁰ certain workmen struck work as a protest against the lay-off and the transfer of some workmen from one shift to another without giving four days notice as required under standing orders. The question which came for decision was that whether the strike was justified on these grounds. The industrial tribunal answered in affirmative. Against this a writ petition was preferred in the ***hon'ble Rajasthan High Court***, wherein reversing the decision of the Tribunal it was observed that what is generally known as a lightning strike like this take place without notice and each worker striking is guilty of misconduct under the standing orders. Such strike cannot be said to be justified at all.

(3). Here in the instant case earlier the workmen have resorted to strike on dt.29-12-2013 for reason of due salary for the month of November 2013 and bonus for the year of 2013-14. The next strike from dt.20-11-2014 onwards was held since two employees, named Hanif Mohamadhussain Khalifa and Jagdishbhai Jethabhai Chauhan, were transferred to other places from Nadiad.

¹⁰ Sadual Textile Mills v/s Their Workmen reported in AIR 1958 Raj 202.

The above reasons were not such inevitable for holding a sudden illegal strike. The workmen possess legal remedy under law for the above stated reasons. In case of due salary the remedy is provided under Payment of Wages Act and for due bonus the remedy is under the Payment of Bonus Act. If the two employees were transferred in violation of their service conditions than also in that case there was legal remedy available to the workmen. But instead of adopting such a legal course they have adopted an extreme step of illegal strike for the above stated reasons which cannot be termed as justified from any point of view. So in this circumstance the strike held by the workmen was not even justified. Therefore it is proved that the strike which was resorted by the workmen was an illegal and unjustified strike.

(14). Discussion regarding abandonment of job:

(1). The next contention of the opponent side is that by going on the strike the applicant and other workmen have voluntarily abandoned the job. This contention is also related to issue no.3 and it is part of that issue. On this point of voluntarily abandoning the job both the sides have relied on several citations so it is required to take brief note of these citations.

(2). The opponent side has relied on the following citations:

(a). The case before ***hon'ble Delhi High Court*** between ***Mahesh v/s N.D.M.C.***¹¹, wherein it is held that when workman fails to prove his termination by any document than it would be abandonment of job on his own accord.

(b). The case before ***hon'ble Bombay High Court*** between ***Competition Printing Press v/s Shriut Jaiprakash Singh and***

¹¹ Mahesh v/s NDMC reported in 2013 LLR 184.

another¹², wherein the workmen refused to get reinstated during conciliation proceeding nor did express his willingness to join work so it was held as abandonment of job.

(c). The case before **hon'ble Bombay High Court** between **Raju Shankar Poojary v/s Chembur Warehouse Company & anr.**¹³, wherein workman failed to join duty in-spite of company's willingness to allow him to join duty so it was held as abandonment of job.

(d). The case before **hon'ble Madras High Court** between **Krishnan P. v/s Management, Jonas Woodhead and Sons (India) Ltd., Madras**¹⁴, wherein it is held that when the workman was sent letters for reporting on duty and he hasn't given any response than inquiry is not required and it amounts to abandonment of job.

(e). The case before **hon'ble Delhi High Court** between **M/s. Trina Engineering Company (P) Ltd. v/s The Secretary (Labour) & others**¹⁵, wherein it was held that reinstatement even without back-wages will not be tenable when management has not refused duties and has offered work.

(f). The case before **hon'ble Delhi High Court** between **Tej Pal v/s Gopal Narain & Sons**¹⁶, wherein workman had alleged wrongful termination but hasn't reported to duty when management had offered him so in response to his demand notice hence it was held to be abandonment of job.

(g). The case before **hon'ble Bombay High Court** between **M/s NRK House v/s Mr. P. V. Tommy**¹⁷, wherein the employer hasn't terminated the service but he had asked the workman to report for work. It was the workman who had voluntarily stayed away from

12 Competition Printing Press v/s Shriut Jaiprakash Singh reported in 2001 LLR 768.

13 Raju Shankar Poojaray v/s Chembur Warehouse Company reported in 2003-IV-LLJ (Suppl)- NOC - 456.

14 Krishnan P. v/s Management, Jonas Woodhead... reported in 2003 LLJ 686.

15 M/s. Trina Engineering Company v/s The Secretary reported in 2006 LLR 51.

16 Tej Pal v/s Gopal Narain reported in 2006 LLR 1142.

17 M/s NRK House v/s Mr. P. V. Tommy reported in 2009 LLR 2.

employment so it was held that he wasn't entitled for back-wages.

(h). The case before ***hon'ble Gujarat High Court*** between ***Vantage Advertising Pvt. Ltd. v/s Javedali Kutubali Hashmi***¹⁸, wherein it is held that workman who abandons job will not get relief.

(i). The case before ***hon'ble Delhi High Court*** between ***Rajiv Singh v/s Special Cables (P) Ltd.***¹⁹, wherein it is held that workman having declined to join duty despite letters asking him to join duty has no right to get back-wages along with the relief of reinstatement.

(j). The case before ***hon'ble Bombay High Court*** between ***Jamil A. Adhikari v/s Oberoi Towers, Nariman Point, Mumbai***²⁰, wherein the workman's intention was not to report on duty at any time so it was held as an abandonment of job.

(k). The case before ***hon'ble Punjab & Haryana High Court*** between ***Laxmi Kant v/s Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon***²¹, wherein it is held that management had not passed an order of termination and so when there is no termination than it is not required to hold an inquiry therefore the workman had himself abandoned the job.

(3). The applicant side has relied on following citations:

(a). The case before ***hon'ble Madhya Pradesh High Court*** between ***Regional Manager, Central Bank of India v/s Vijay Krishna Neema***²², wherein the absentee employee wasn't issued personal notice as provided in clause no.16 of Shastri award.

(b). The case before ***hon'ble Delhi High Court*** between

18 Vantage Advertising Pvt. Ltd. v/s Javedali Kutubali Hashmi reported in 2011-II-LLJ-444 (Guj).

19 Rajiv Singh v/s Special Cables (P) Ltd. reported in 2014 -II- CLR 111.

20 Jamil A. Adhikari v/s Oberoi Towers reported in 2016-IV-LLJ-190 (Bom).

21 Laxmi Kant v/s Presiding Officer,.. reported in 1991-I-LLJ 224.

22 Regional Manager, Central Bank of India v/s Vijay Krishna Neema reported in 2009-II-CLR 1.

Floortex Collection v/s Vikram Thapa²³, wherein during the pending case the workman wasn't offered work and the witness of company has even denied to take back the workman so it was held not to be abandonment of job.

(c). The case before **hon'ble Punjab & Haryana High Court** between **Sood Industries v/s Presiding Officer and ors.**²⁴, wherein it is held that the management hasn't issued any notice nor has conducted any inquiry for proving abandonment of job on part of workman.

(d). The case before **hon'ble Punjab & Haryana High Court** between **Ishwar v/s Presiding Officer, Labour Court**²⁵, wherein it is held that management has to issue show cause notice at the last available address and held inquiry in case of abandonment of job by workman.

(e). The case before **hon'ble Delhi High Court** between **M/s. Economic Transport Organization v/s Dharmendra Mishra**²⁶, wherein it is held that abandonment of job amounts to misconduct which requires a proper inquiry. In this case the employer was ready to take the workman on work but since the workman wasn't ready so to put quietus to the litigation and the parties can part of peacefully an amount of rupees five lacs was awarded as full and final settlement.

(f). The case before **hon'ble Punjab & Haryana High Court** between **Ved Prakash v/s Presiding Officer Industrial Tribunal cum Labour Court, Rohtak**²⁷, wherein notice wasn't issued by the management for alleged absence of a part time employee. It was held that since workman was a part time employee it is ipso-facto not a ground to give unbridled authority to the management for adopting the policy of hire and fire.

23 Floortex Collection v/s Vikram Thapa reported in 2016(4) LLJ 184.

24 Sood Industries v/s Presiding Officer reported in 2015 LLR 530.

25 Ishwar v/s Presiding Officer reported in 2015 LLR 595.

26 M/s. Economic Transport Organization v/s Dharmendra Mishra reported in 2014 LLR 696.

27 Ved Prakash v/s Presiding Officer... reported in 2014 (I) CLR 1017.

(g). The case before ***hon'ble Punjab & Haryana High Court*** between ***Block Development and Panchayat Officer cum Executive Officer v/s Balbir Singh***²⁸, wherein it was held that when the workman has worked for 18 years than without issuing notice the plea of abandonment of job cannot be raised.

(h). The case before ***hon'ble Punjab & Haryana High Court*** between ***M/s. O. K. Play India Ltd. v/s Raj Kumar and another***²⁹, wherein it is held that if the regular employee is willfully absent than show cause notice is to be issued and inquiry is to be held.

(i). The case before ***hon'ble Punjab & Haryana High Court*** between ***Kali Ram v/s Presiding Officer***³⁰, wherein it is held that plea of abandonment is not sustainable if management has not issued notice asking workman to report for duty.

(j). The case before ***hon'ble Himachal Pradesh High Court*** between ***Narain Singh v/s State of Himachal Pradesh***³¹, wherein it is held that the burden of proof is upon the employer in respect of his plea that workman himself has abandoned the job. Further it is held that the 'abandonment or relinquishment of service' is always a question of intention and normally such intention cannot be attributed to an employee without adequate evidence in that behalf.

(k). The case before ***hon'ble Punjab & Haryana High Court*** between ***Vijay Singh v/s Presiding Officer, Industrial Tribunal -cum- labour Court -3, Faridabad***³², wherein it is held that to prove abandonment on part of workman it is bounden duty of management to issue notice to workman and ask him to report for duty and on failure on his part, to take disciplinary action to terminate his service.

28 Block Development ... v/s Balbir Singh reported in 2014(I) LLJ 628.

29 M/s. O.K. Play India Ltd. v/s Raj Kumar reported in 2014 LLR 31.

30 Kali Ram v/s Presiding Officer reported in 2017 LLR 95.

31 Narain Singh v/s State of Himachal Pradesh reported in 2017 LLR 647.

32 Vijay Singh v/s Presiding Officer... reported in 2017 LLR 945.

(l). The case before ***hon'ble Delhi High Court*** between ***Shiv Kumar v/s Hansita***³³, wherein it is held that when workman had put service of 16 years than it is not expected to throw him out of employment just on basis of three UPC letters asking him to join back his duties.

(m). The case before ***hon'ble Delhi High Court*** between ***M. C. D. v/s Vijay Pal***³⁴, wherein it is held that in case of abandonment of service the employer had to issue one month's notice calling the workman to join duties and also to hold an inquiry before terminating his service. So the onus to prove abandonment lies on the employer.

(n). The case before ***hon'ble Delhi High Court*** between ***Emsons Radio Corporation, Laxman Aswani v/s Presiding Officer, Secretary (Labour) Government of National Capital Territory of Delhi, Ram Avadh***³⁵, wherein inquiry was not held for unauthorized absence and no suggestion was given in cross examination of workman to perform his duty.

(o). The case before ***hon'ble Allahabad High Court*** between ***Surendra Kumar Katiyar v/s Presiding Officer, Labour Court (IV)***³⁶, wherein the workman was unauthorizedly absent from duty so his name was struck off from muster roll. Therefore it was held that the principles of natural justice were violated since before striking off the name of workman he is required to be heard.

(p). The case before ***hon'ble Allahabad High Court*** between ***Nirmal Kumar Jain v/s Presiding Officer Central Government Industrial Tribunal Cum Labour Court Kanpur***³⁷, wherein it was held that if the case set up by the employer is taken to be correct that the workman has abandoned then also his services cannot be terminated without complying provisions of sec.25-F.

33 Shiv Kumar v/s Hansita reported in 2010 (4) LLJ 795.

34 MCD v/s Vijay Pal reported in LAWS(DLH)-2007-4-152.

35 Emsons Radio Corporation v/s Presiding Officer... reported in LAWS(DLH)-2006-8-189.

36 Surendra Kumar Katiyar v/s Presiding Officer... reported in LAWS(ALL)-2004-5-194.

37 Nirmal Kumar Jain v/s Presiding Officer... reported in LAWS(ALL)-2003-0-403.

(q). The case before ***hon'ble Orissa High Court*** between ***Divisional Manager, Orissa Forest Development Corporation Ltd. v/s Kanista Bisoi***³⁸, wherein the employer has pleaded abandonment of service on part of workman so the onus was on employer but he hasn't adduced any evidence.

(r). The case before ***hon'ble Allahabad High Court*** between ***D.C.M. Ltd. v/s State of Uttar Pradesh***³⁹, wherein it is held that in case of unauthorized absence the explanation of workman is to be sought.

(s). The case before ***hon'ble Bombay High Court*** between ***Bhimrao Rambhau Abhang v/s Kohinoor Engineering Company***⁴⁰, wherein it is held that even in case of voluntary resignation the principles of natural justice are required to be followed.

(t). The case before ***hon'ble Punjab & Haryana High Court*** between ***Chief Engineer, P. W. D. Public Health Branch v/s Presiding Officer, Labour Court***⁴¹, wherein it is held that plea of abandonment cannot be accepted and in absence of inquiry the termination is bad in law.

(4). Now discussing on the point of 'voluntarily abandonment of job' by keeping the ratios of the above referred citations in the backdrop of mind, at the threshold it is to be said that the intention of the workman plays an important part as to whether he has abandoned or relinquished his service or not. At this juncture it is required to refer, the citation which is the case before ***hon'ble Supreme Court*** between ***G.T. Land and others v/s Chemicals and Fibres India Limited***⁴², wherein the question before hon'ble Supreme Court was that what is the true meaning of the expression

38 Divisional Manger,... v/s Kanista Bisoi reported in 2005-II-LLJ-121.

39 DCM Ltd. v/s State of U.P. reported in LAWS(ALL)-2002-9-213.

40 Bhimrao Rambhau Abhang v/s Kohinoor Engineering Co. reported in LAWS(BOM)-2005-6-77.

41 Chief Engineer,.. v/s Presiding Officer reported in 2010 LLR 287.

42 G T. land v/s Chemicals & Fibers India Ltd. reported in AIR 1979 SC 582.

abandonment of service. After considering the lexical and legal meanings of the expression, it was held that to constitute abandonment of service there must be total and complete giving up of duties so as to indicate an intention not to resume the same. Further in case of ***Buckingham Co. v/s Venkatiah***⁴³, it was held that under the common law an inference that an employee has abandoned or relinquished the service was not easily drawn unless from the length of absence and surrounding circumstances an inference to that effect could be legitimately drawn and it could be assumed that the employee intended to abandon the service. Here in the instant case the applicant along with the other workmen had held the strike for the reason of due salary, due bonus and objecting the transfer of two employees. This strike is held to be illegal and unjustified but when a group of workmen goes on strike even though the said strike is illegal and unjustified than also it cannot be said that their intention was to abandon or relinquish the work on permanent basis. Since the step of strike is only initiated to pressurize the management for accepting their demands. Further the contention of strike and voluntarily abandonment of service cannot go hand in hand, since a strike is held by a group of workmen but it cannot be presumed that the whole group of workmen was having a common intention to voluntarily abandoned their job and that too on permanent basis. Further even as per the say of the opponent during the conciliation proceeding when the workmen were asked to join work, their representative has stated that if all the workmen are reinstated along with back-wages than they are ready to join work. Further the applicant has even submitted the application at Ex.19, at the fag end of this proceeding, stating that he is ready to join work by keeping pending the dispute of back-wages. In reply to this application the opponent has stated that they are ready to take the applicant on

43 Buckingham Co. v/s Venkatiah reported in AIR 1964 SC 1272.

work on conditional basis and without any back-wages. So looking to this conduct of the applicant it cannot be said that his intention was to voluntarily abandon his service and that too on permanent basis. Hence the plea of the opponent side that the applicant has voluntarily abandoned his job is not proved in this case. Therefore the facts of issue no.3 is proved partly only with respect to joining of strike hence this issue is replied as "**partly affirmative**".

(10.4). Issue no.5::

(1). Now when it is proved that the applicant of the instant case is not terminated from service but in fact he had joined the strike, which as discussed earlier is proved to be illegal and unjustified than whether any relief can be granted in this case to the applicant. It is an admitted fact that the opponent company has dismissed the five employees who as per their say were the main culprits and instigators for the strike. The opponent company has asked the applicant to join duty during the conciliation proceeding which was denied by the Ld. representative of the applicant with a condition that all the workmen along with the applicant are to be taken back on work with back-wages. Than after the applicant has furnished the application stating that he is ready to join work by keeping pending the dispute of back-wages and the opponent side has replied to it stating that they are ready to take the applicant back on work on conditional basis and without any back-wages. The opponent company has even furnished the proforma of compromise pursis in this case. The company has even stated in that reply that some of the workmen had even came back on work after the strike of dt.20-11-2014 by withdrawing their individual cases and for the company all workmen are equal so if the applicant is ready to accept the terms of compromise than he can join work.

(2). So in this circumstance the relationship of an employer

and employee is yet existing and it hasn't reached on such a verge that it has become impossible for them to work in coexistence. Further even looking to the terms of reference it is to be decided that whether the applicant is entitled for relief of reinstatement. This Court is even duty bound to follow the aim and object of the Industrial Disputes Act, 1947 in its true letter and spirit. The aim of the Act is for settlement of industrial disputes so in this case even though when the applicant has joined the strike which is held to be illegal and unjustified than also looking to his role in it and more particularly when the opponent is even ready for taking the applicant back on work, it is required to pass an appropriate relief with regards to reinstatement, which will be a permanent settlement of the present industrial dispute.

(3). At this juncture it is required to go through the citation relied by the opponent side which is the case before ***hon'ble Supreme Court*** between ***India General Navigation and Railway Co. Ltd. v/s Their Workmen***⁴⁴, wherein it was discussed that what punishment should be given to workmen who have joined the strike. It was held that a clear distinction has to be made between those workmen, who have not only joined in such a strike, but also took active part in the strike by obstructing the loyal workmen from carrying on their work and those workmen who were more or less silent participators in such a strike. It was further held that it is not in the interest of the industry that there should be a wholesale dismissal of all the workmen who had merely participated in such a strike and it is certainly not in the interest of the workmen themselves. An Industrial Tribunal, therefore, has to consider the question of punishment, keeping in view the overriding consideration of the full and efficient working of the industry as a whole. The punishment of dismissal or termination of service,

⁴⁴ India General Navigation and Railway Co. Ltd. v/s Their Workmen reported in AIR 1960 SC 219.

has, therefore, to be imposed on such workmen as had not only participated in the illegal strike, but had fomented it, and had been guilty of violence or doing acts detrimental to the maintenance of law and order. In the present case also as discussed above the opponent company has dismissed the five employees from service who were playing active role in the strike and were instigating other workmen for strike but the present applicant and other allied workmen who were only silent participators were not dismissed from service. Hence on basis of the ratio of above judgment also it is required to pass appropriate order for reinstatement.

(4). Further since the applicant has gone on strike and is still on strike but his service is not terminated by the opponent so the initial direction for complying the order which is to be passed in this case is to be issued to the applicant and subsequently on compliance of that direction by the applicant, the opponent has to comply with the direction which is to be passed in this case. Hence in this circumstance, it will be appropriate to pass an order directing the applicant of this case that within sixty days of publication of this award, he has to report on his duty in the opponent company by submitting a written application for the same and if required, he may accompany his Ld. representative for the that purpose. Further if the applicant complies with this initial direction than the opponent company has to reinstate him on his original service along with the continuity of service but if the applicant fails to comply with this initial direction than he will not be entitled for getting reinstated on his job in the opponent company.

(5). Discussion of back-wages:

(5.1). The parties to this case have locked their horns on the

question of back-wages. Both the sides have relied on several citations on the point of back-wages. The applicant has relied on following citations:

- (a). The case before ***hon'ble Supreme Court*** between ***C. N. Malla v/s State of Jammu & Kashmir***⁴⁵, wherein it is held that there is no straight jacket formula for awarding back-wages and it is not automatic.
- (b). The case before ***hon'ble Supreme Court*** between ***Cantonment Executive Officer v/s Vijay D. Wani***⁴⁶, wherein at the fag end of para no.4, it is held that so far as back-wages is concerned it depends upon case to case.
- (c). The case before ***hon'ble Supreme Court*** between ***Niranjan Cinema v/s Prakash Chandra Dubey***⁴⁷, wherein it is held that gainful employment would also include self employment where from income is generated.
- (d). The case before ***hon'ble Bombay High Court*** between ***Shashikant Ganagaram Narkar v/s Advance Transformers and Equipments Pvt. Ltd.***⁴⁸, wherein the workman had discharged the onus that he was not gainfully employed but the employer did not discharge the onus which was shifted on him hence fifty percent back-wages was awarded.
- (e). The case before ***hon'ble Gujarat High Court*** between ***Chotalia Mahesh Manjibhai v/s Gujarat Agro-Industries Corporation Limited***⁴⁹, wherein looking to the facts of the case petition was allowed for the prayer of full back-wages.
- (f). The case before ***hon'ble Supreme Court*** between ***Malwa Vanaspati and Chemicals Co. Ltd. v/s Rajendra***⁵⁰, wherein since the applicant was taken back on work during pending proceeding

45 C. N. Malla v/s State of J.K. Reported in LAWS(SC)-2009-8-30.

46 Cantonment Executive Officer v/s Vijay D Wani reported in AIR 2008 SC 2953.

47 Niranjan Cinema v/s Prakash Chandra Dubey reported in 2008(I) CLR 429.

48 Shashikant Gangaram Narkar v/s Advance Transformers.. reported in 2014 LLR 1254.

49 Chotalia Mahesh Manjibhai v/s Gujarat Agro-Industries ... reported in 2012(II) CLR 972.

50 Malwa Vanaspati & Chemical Co. Ltd. v/s Rajendra reported in 2010(I) LLJ 861.

so he was awarded 50% back-wages.

(g). The case before ***hon'ble Supreme Court*** between ***Madhya Pradesh Electricity Board v/s Maiku Prasad***⁵¹, wherein the award of full back-wages was decreased to fifty percent back-wages.

(h). The case before ***hon'ble Supreme Court*** between ***P. V. K. Distillery Ltd. v/s Mahendra Ram***⁵², wherein it is held that even though termination is unjustified and illegal, it itself does not create a right of reinstatement with full back-wages.

(i). The case before ***hon'ble Supreme Court*** between ***Gauri Shanker v/s State of Rajasthan***⁵³, wherein it was held that Labour Court was not correct in denying back-wages without assigning proper and valid reasons. Further the employer had not proved his stringent financial condition for denial of back-wages nor has proved that workman was gainfully employed so twenty five percent back-wages was awarded.

(j). The case before ***hon'ble Punjab & Haryana High Court*** between ***Dal Chand v/s K. B. Hydraulic Engineering Works (Regd.)***⁵⁴, wherein it is held that full back-wages would be a normal rule and the party objecting to it must establish the circumstances necessitating departure.

(5.2). On the contrary, the Ld. advocate for the opponent side has relied on following citations:

(a). The case before ***hon'ble Gujarat High Court*** between ***Glaxo Laboratories Employees Union v/s Glaxo India Ltd.***⁵⁵, wherein it is held that even if the strike is legal the workman cannot be entitled for wages of the strike period and for being entitled for wages the strike should be both legal and justified.

51 Madhya Pradesh Electricity Board v/s Maiku Prasad reported in 2009(I)LLJ 34.

52 P. V. K. Distillery Ltd. v/s Mahendra Ram reported in 2009(II) LLJ 513.

53 Gauri Shanker v/s State of Rajasthan reported in 2015 LLR 785.

54 Dal Chand v/s K. B. Hydraulic Engineering Works reported in 2014 LLR 1240.

55 Glaxo Laboratories Employees Union v/s Glaxo India Ltd. reported in 1996 LLR 885.

(b). The case before ***hon'ble Bombay High Court*** between ***Sonal Garments v/s Trimbak Shanker Karve***⁵⁶, wherein it is held that when workman did not report to duty despite offer being made by the management than no back-wages can be awarded.

(c). The case before ***hon'ble Bombay High Court*** between ***Madhuri Chandulal Lakhani v/s Prashant Shripad Satpute***⁵⁷, wherein it is held that when employer had denied termination and has offered job at the earliest possible opportunity and that too repeatedly but the workman has refused it than back-wages cannot be awarded.

(d). The case before ***hon'ble Bombay High Court*** between ***M/s. Purafil Engineers, Pune v/s Shaikh Anwar Abdul Rahman***⁵⁸, wherein it is held that when workman was offered reinstatement but he hasn't accepted it than he is not entitled for back-wages from date of that offer since the Labour laws are not meant to harass the employers.

(e). The case before ***hon'ble Jharkhand High Court*** between ***Tinplate Company of India Ltd. v/s State of Bihar and others***⁵⁹, wherein the workman did not join duty despite employer's offer to reinstate him so back-wages for such period from date of offer wasn't granted.

(f). The case before ***hon'ble Bombay High Court*** between ***Ravindra N. Chaudhari v/s Zonal Manager, IDBI Bank Ltd.***⁶⁰, wherein it is held that normally 'no work no pay' should be the formula and law is settled that reinstatement should not be always followed by full back-wages.

(g). The case before ***hon'ble Supreme Court*** between ***Ram Ashrey Singh v/s Ram Bux Singh***⁶¹, wherein it is held that

56 Sonal Garments v/s Trimbak Shanker Karve reported in 2003 LLR 5.

57 Madhuri Chandulal Lakhani v/s Prashant Shripad Satpute reported in 2015 LLR 239.

58 M/s. Purafil Engineers, Pune v/s Shaikh Anwar Abdul Rahman reported in 2000 LLR 268.

59 Tinplate Company of India Ltd. v/s State of Bihar reported in 2003 (IV) LLJ (Suppl) 103.

60 Ravindra N. Chaudhari v/s Zonal Manager, IDBI Bank Ltd. reported in 2012 LLR 1267.

61 Ram Ashrey Singh v/s Ram Bux Singh reported in 2003 LLR 415.

payment of back-wages on reinstatement is not automatic entitlement to an employee since it is discretionary and has to be dealt with in accordance with facts and circumstance of each case.

(h). The case before ***hon'ble Supreme Court*** between ***Kendriya Vidyalaya Sangathan v/s S. C. Sharma***⁶², wherein it is held that initial burden to prove that the employee is gainfully unemployed lies on the employee.

(i). The case before ***hon'ble Supreme Court*** between ***U. P. S. R. T. C. Ltd. v/s Sarada Prasad Misra***⁶³, wherein it is held that question of back-wages is independent of reinstatement and payment of back-wages is not a natural consequence on setting aside the order of dismissal.

(j). The case before ***hon'ble Supreme Court*** between ***P. Karuppaiah v/s General Manager, Thiruvalluvar Transport Corporation Ltd.***⁶⁴, wherein it is held that the employee to claim relief of back-wages is required to prove with the aid of evidence that he was not gainfully employed anywhere.

(k). The opponent side has also relied on the article titled as "***a worker through his own default cannot reap the benefit through Labour Laws from his employer***".

(5.3). Further looking to the citation which is the case before ***hon'ble Supreme Court*** between ***Crompton Greaves Ltd. v/s the Workmen***⁶⁵, wherein it was held that if the strike is legal and justified than the workmen will be entitled to wages for the period of strike. A strike is legal if it does not violate any provision of the statute. It cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether particular strike is justified or not is a question of fact, which has to be judged in the light of the fact and circumstances of each case. The use of force,

62 Kendriya Vidyalaya Sangathan v/s S. C. Sharma reported in 2005-II-LLJ 153.

63 UPSRTC Ltd. v/s Sarada Prasad Misra reported in 2006 LLR 586.

64 P. Karuppaiah v/s General Manager,.. reported in 2018-I-LLJ 257 (SC).

65 Crompton Greaves Ltd. v/s The Workmen reported in AIR 1978 SC 1489.

coercion, violence or acts of sabotage resorted by the workmen during the strike period which was legal and justified would dis-entitle them to wages for strike period. In the instant case the strike which was held by workmen is proved to be illegal and unjustified hence in those circumstance the applicant cannot become entitled for any wages for the period of strike. Also referring back the citation of ***Bharat Petroleum Corporation Ltd. (supra)***, which is relied by the opponent side, therein it is held that those who cry for right to work do not have right to strike work. Every strike and lock out causes loss of lakhs or crores of rupees to the nation. A prolonged strike is a suicidal act on the part of workmen. The unions which lead such strikes have nothing to lose except perhaps the membership of such unit which finally is taken on the brink of ruination along with the workmen. In the present case also the workmen on some sort of advice or ill advice had taken an extreme step of going on a sudden strike for the reasons, for which there were legal remedy available under statute. This strike is proved to be an illegal and unjustified strike which have continued for a prolonged period. The workmen by adopting such a step have hit an axe on their owns foot and have done their own wrong which have caused them the loss of back-wages for the period of strike. Hence in this circumstance the applicant is not entitled for any amount of back-wages for the period of strike. So answer to issue no.5 is accordingly given as "***partly affirmative***".

(10.5). The parties to these case have even relied on some other citations. The applicant has relied on three citations, which are the cases before ***hon'ble Supreme Court***. First amongst it is the case between ***Mackinon Mackenzie and Co. Ltd. v/s Mackinnon Employees Union***⁶⁶, wherein the question was regarding violation of provisions of sec.25-G and sec.25-FFA. The next is the case

⁶⁶ Mackinon Mackenzie Co. Ltd. v/s Mackinnon Employees Union reported in 2015(II) LLJ 151.

between ***Director of Horticulture v/s H. A. Kumar***⁶⁷, wherein the question was regarding compliance of sec.25-F. The third is the case between ***Jasmer Singh v/s State of Haryana***⁶⁸, wherein the question was regarding delay. The applicant side has also relied on the citation, the case before ***hon'ble Gujarat High Court*** between ***Mayank Desai v/s Sayaji Iron and Engineering Co. Ltd.***⁶⁹, wherein the vital question was related to the definition of workman i.e. sec.2(s).

The opponent side has also relied on the citation, the case before ***hon'ble Bombay High Court*** between ***B. V. Waghmare v/s Lancer Travels and others***⁷⁰, wherein the question was whether the amendment in date of termination of service can be allowed at a belated stage. It was held that since it was an afterthought so it cannot be allowed. All the above citations, which are referred in this para, aren't helpful to the respective sides since the facts in the present case is very much dissimilar.

(10.6). Therefore the above discussion of all the issues can be summed up as below:

The applicant of the instant case wasn't terminated by the opponent company but he along with other workmen had gone on a strike from dt.20-11-2014 and the said strike is proved to be an illegal and unjustified strike. Therefore in this circumstance the applicant will be entitled for a conditional relief of reinstatement as discussed above but without any amount of back-wages. So the final order for issue no.6 is passed as below in the interest of justice.

:: ORDER ::

(1). The reference case is hereby partly allowed.

67 Director of Horticulture v/s H. A. Kumar reported in 2013 (II) CLR 863.

68 Jasmer Singh v/s State of Haryana reported in 2015 LLR 225.

69 Mayank Desai v/s Sayaji Iron ... reported in 2011-IV-LLJ 452.

70 B. V. Waghmare v/s Lancer Travels reported in 2009-III-CLR 423.

(2). The applicant is hereby directed that within sixty days of publication of this award, he has to report on his duty in the opponent company by submitting a written application for the same and if required, he may accompany his Ld. representative for this purpose. Further if the applicant complies with this initial direction and reports to work within prescribed period of sixty days than the opponent company has to immediately reinstate him on his original service with continuity of service but if the applicant fails to comply with the initial direction than he will not be entitled for getting reinstated on his service in the opponent company. In any case the applicant will not be entitled for getting any amount of back-wages for the interregnum period.

(3). No order as to cost.

Dt.25-04-2018.

**(Parvezahemad -
- Alimohmad Malaviya)
Judge (S.D.)
Labour Court, Nadiad.
Judge Code : GJ00837.**

Nadiad.