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High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 7243 of 2002

Bata Shoe Workers' Union (Regd.)		APPELLANT
	Vs	
Presiding Officer, Industrial Tribunal-cum-Labor Court-I, Faridabad Haryana and Another		RESPONDENT

Date of Decision: July 15, 2009

Acts Referred:

- Industrial Disputes Act, 1947 - Section 22(2), 23, 23(2), 23A

Citation: (2011) 1 ILR (P&H) 272

Hon'ble Judges: K. Kantian, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

K. Kannan J.

I. Subject of reference

1. On a reference from the Government for an adjudication, the Industrial Tribunal took up for consideration whether the strike resorted to by workers on 24th February, 1999 was justified, whether the continuation of lockout from 25th February, 1999 by the management was justified and to what reliefs the respective parties were entitled to.

II. Circumstances leading to reference

2. The stand-off-between the workers and the management of M/s Bata India Limited arose on account of varying perceptions of what the workmen and the management respectively made out of the non-observance of the terms of settlement that had been brought about through a memorandum dated 30th April, 1998. The workmen found (i) that the management had unjustifiably effected some

deductions from their salaries; (ii) it had closed several departments and were transferring workmen from one department to another without any rhyme and reason and, (iii) it undermined their productivity and the entitlement of workers to higher wages by deliberately outsourcing some jobs from out of the factory. The workers, through a letter dated 8th January, 1999, warned the management of direct action by resort to strike.

3. The management sought to quell the threat by responding to them that the strike was unjustified and exhorting them to realize their sense of responsibility and refrain from creating tensions in bilateral relations. The workers, however, went on strike on 24th February, 1999 as previously informed through notice. The management slapped a lockout immediately on 25th February, 1999 and closed down the factory. The entry of workers/ employees to the premises of the factory had been stopped. This according to management was in response to the illegal strike on 24th February, 1999 started by the workers from 7.30 A.M. without any reason whatever. The workers were informed that they were not entitled to any payment of wages for the period of strike and warned them of imminent disciplinary action. Tripartite meeting was held under the aegis of the Labor Commissioner, Haryana on 21st April, 1999 where the representatives of the management and workmen had participated. The workers were reported to have indicated that for the lifting of lockout and payment of wages during the lockout period were pre-requisite for starting a dialogue on productivity and discipline. The management found this pre-condition to be unreasonable. The workers were reported to be in a state of turmoil at the lockout and the denial of wages that it entailed. There had been notices by the management on 17th May, 1999, 20th May, 1999 and 24th May, 1999 referring to the state of tension that was prevailing in or around the factory and the quarters of the managerial staff. Parleys for peaceful resolution of disputes went side by side where demands like changing the hours, observance of punctuality and discipline were discussed.

4. The first positive turn of events was marked through a communication on 8th July, 1998 when the Management notified the change of service conditions with effect from 28th July, 1998, that altered the shift timings from 7.15 A.M.-4.30 P.M. to 7.45 A.M.-5.00 P.M. The marginal change in the commencement and ending of the shift periods was to synchronize the arrival and departure timings of passenger trains by which many workers were said to be commuting to the factory. There were other minor irritants which were not still solved; namely, the alleged sabotage of a machinery by breaking of the lock of the central panel of kneader No. 1. Issues of discipline and productivity could not be still sorted out and reports were secured also from the Assistant Labor Commissioner. The Government declared the lockout to be illegal but the management filed Writ Petition No. 11866 of 1999 before this Hon''ble Court challenging the direction for withdrawal of the lockout and an interim stay was also ordered by this Court on 5th August, 1999. However, further talks progressed that yielded to a settlement arrived at between the workers and the

management on 25th October, 1999 when the lockout was lifted and the workers resumed work. Independent action had been taken by the workers claiming wages for the period from 19th August, 1999 till 24th October, 1999 when the lockout continued demanding their entitlement to wages. The issue for adjudication before the Labor Court was, therefore, confined to the respective contentions of the workmen and the management regarding the legality or otherwise of the strike and the lockout respectively and the entitlement of the workmen to wages during the period from 24th February, 1999 to 19th August, 1999.

III. The Labor Court''s findings

5. Before the Labor Court the attempt of the respective parties was to show the legality of the strike and lockout and also the justification or otherwise of its continuation. The Labor Court found that the strike carried on by the workers on 24th February, 1999 was illegal in view of the fact that proceedings were pending before the Conciliation Officer but it also went on to observe that the lockout was not illegal on account of the fact that the strike was illegal and the lockout was, therefore, protected by the provisions of Section 23(2) of the Industrial Disputes Act, 1947. The Labor Court set out several instances of alleged misconduct of the workmen that vitiated the industrial atmosphere and found a justification for the continuation of lockout. The Labor Court ultimately, therefore, found that the strike resorted to by the workers on 24th February, 1999 was illegal and unjustified and they were not entitled to get any wages for that day and that continuation of lockout of the management was legal and justified and the workers were not entitled to wages for the period of lockout also namely from 25th February, 1999 to 19th August, 1999 that is, the days when the lockout was prohibited by the Government through its notification No. 45341/46, dated 19th August, 1999 but which was stayed by the operation of this Hon''ble Court in C.W.P. No. 11866 of 1999.

IV. Contentions on behalf of the workmen

6. The contention on behalf of the workmen through Shri I.K. Mehta, Senior Counsel was that the declaration of strike as illegal was founded on a reasoning that conciliation was in progress but the Labor Court was in error in assuming that the conciliation that could make illegal a strike as contemplated by the Industrial Disputes Act was a conciliation before the Board and seven days after the conclusion of such proceedings as per Section 23-A of the Industrial Disputes Act. Admittedly, there was no conciliation pending before the Board and therefore, the assumption of the Labor Court was clearly a serious legal flaw. The Strike was observed after a due notice as required by law and therefore, the lockout that was declared the following day on 25th February, 1999 was unjustified and illegal. The denial of wages to them was also, therefore, not tenable. As an alternative statement, the learned Senior Counsel submitted that even if the strike was illegal the lockout was unjustified for the laborers had volunteered to resume work but the management prolonged the lockout. Continuation of lockout for a one-day-strike upto 24th

October, 1999 was a clear case of victimization and grossly disproportionate to the action resorted to by the workmen. The workmen themselves had no reason to go slow on production for an increase in production was assured to them by the terms of settlement already entered into a higher wage and the allegations of sabotage of a kneader machine was not true. The reliance by the Labor Court on the report of the Deputy Commissioner of labor was equally unjustified and the report had not been established by examining the Deputy Labor Commissioner. None of his findings in the report attributing unruly conduct of the workmen could be justified or relied upon.

7. The learned Senior Counsel relied on the decision of the Hon''ble Supreme Court in Northern Dooars Tea Company, Ltd, versus Workmen of Dem Dima Tea Estate 1964 (1) LLJ 436 that when the workmen were willing to report for work after the expiry of the token strike but the management refused to open the gates, the Industrial Tribunal was justified in finding that the management in continuing lockout had not been fair or bona fide. Under such circumstances, the Hon''ble Supreme Court modified direction of the Industrial Tribunal for payment of half the wages for the period between the day of expiry of the strike and the date on which the workmen were permitted to resume the work as a result of the settlement. In yet another decision of the Hon''ble Supreme Court in India Marine Service Private Ltd. Vs. Their Workmen, the Hon''ble Supreme Court had held that where the management directing lockout as a result of the workmen going on strike, which was found unjustified, such lockout though originally justified but its continuance for an unreasonably long period was found to be a justification enough for the workmen to claim half the wages for the period of such lockout.

V. Contentions on behalf of the management:

8. In response to the contention made by the learned Senior Counsel appearing for the petitioners, Shri Chetan Mittal, learned Senior Counsel appearing on behalf of the management conceded that there was indeed no conciliation before the Board for application of Section 23(a) of the Industrial Disputes Act but it referred to the provision of Section 23(c) as governing the issue. Referring to the sub-section that makes reference to a strike as being illegal when it is during the subsistence of a settlement, the learned Senior Counsel pointed out that three essential demands on the basis of which the workmen resorted to strike were all fully covered under the terms of settlement and therefore, the strike was illegal. Delineating further, he would expound that there had been no deduction of wages but on account of fall in production which was assured in the settlement dated 30th April, 1998, some deduction in salary had been applied as per the terms of settlement. Adverting to the grievance of the workmen that some departments had been closed, the learned Senior Counsel would refer to Clause 17 of the agreement that enabled the closure of non-viable operations and to abolish uneconomical operations or departments. Adverting to the grievance of the workmen that the management was deliberately

outsourcing jobs to reduce the entitlement to higher wages, the learned Senior Counsel would refer to Clause 18 of the agreement that spelt out the need of management''s representatives to apply flexibility in production as well as deployment 6f people on the ground that changes in market requirements and demands necessitate frequent changes in pattern of production. Components of job technically and economically not feasible to produce in the factory were permitted to be sourced from outside as per Clause 17 of the agreement. According to learned Senior Counsel, therefore, the strike which had the genesis in the grievances had all been covered under the settlement dated 30th April, 1998 which was put in operation for period of three years that was upto 3rd May, 2001 and the section 23(c) debarred the petitioners from declaring the strike.

9. Learned Senior Counsel made elaborate references to the vitiating atmosphere that prevailed around the factory by the conduct of the workmen and sought to draw support from the reports of the Deputy Labor Commissioner on 23rd May, 1999 and 12th July, 1999. The report detailed instances of the workmen adopting an adamant attitude that the management should first remove the lockout without any condition and draw full salary to the workmen and thereafter, the Union would only talk on the pending issues. It also expatiated on instances of alleged gherao said to have been made on 17th May, 1999--20th May, 1999 at the office for two hours and when they gathered at the residential places of the officers using filthy and abusive language. According to him, the management had adopted every reasonable approach to end the dispute and even when they had the benefit of order of stay of the direction of the Government to lift the lockout, they had still pursued diligently for bringing about an early end to the differences and worked out a fresh memorandum on 25th October, 1999 when admittedly the lockout was lifted. According to him, even if the strike was legal and the lockout was bad in law, it was still justified and the denial of wages was found by the Labor Court was proper.

10. Learned Senior Counsel also pointed out that it would be wrong to characterize the incident of 24th February, 1999 alone as a day when the strike was carried out but it was merely a continuation of the conduct that began even earlier by reducing the number of hours of work by persistently coming late and causing fall in production. The temporary absence or late arrival of some workmen who were to commence the operations on machines initially had a cascading effect of the whole assembly line not being able to complete the work that fell in the assembly and consequently the incident must be seen as a continuous period of strike indulged by the workmen even prior to 24th February, 1999 and causing a loss of over Rs. 2 lacs per day to the management on its inability to meet the commitments to their consumers. Competition was already emerging in the market with new brands vying with each other to capture place in the consumer-oriented market.

11. The learned Senior Counsel referred to several decisions of the Hon''ble Supreme Court and of this Court to drive home the point that even before the

complete cessation of work on any one day, even go slow tactics adopted by workmen could qualify for the definition of strike and if it was unjustified, the lockout declared by the management or the denials of the wages to the workmen could not be complained of. He referred to a decision in Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, to the effect that go slow attitude adopted by the workmen could be a basis for taking appropriate action and even a demand of undertaking from the workmen to maintain discipline and failure to give such undertaking could justify the management from taking appropriate action and a Court would be justified in looking at the attitude of the workmen under such circumstances. Referring to the decision of Bombay High Court reported in Engineering Mazdoor Sabha, Bombay and others versus S. Taki Belgrami and another AIR 1970 Bombay 402 learned Senior Counsel would urge that where misdemeanor and misconduct of workmen went to the length of endangering lives of loyal workmen and officers of company and had the effect of heavy financial losses to company and of destroying credit with its customers, the company would be absolved from paying wages for period of illegal lockout, since lockout in such case could be seem to be justified. In Workmen of Sur Iron and Steel Co. (P) Ltd. Vs. Sur Iron and Steel Co. (P) Ltd. and Another, the Hon''ble Supreme Court had held that the strike by workmen protesting against change in weekly off and the refusal to work would be illegal if in a case where the management changed the weekly off from Sunday to Saturday only on account of electricity cut effected by the State Government. If a lockout declared under the circumstances by the management in response to an illegal strike, was held to be justified, the Hon''ble Supreme Court also dealt with the situation of how the factory was required to be closed when the Union refused to sign a settlement at the time of lifting of lockout containing a clause in draft settlement that some of the workmen who had been suspended during the lockout should tender unconditional apology to the management. The closure of the factory, under such circumstances, was also held to be justified. The decisions relating to the instances of the management to give undertakings were cited by the learned Senior Counsel as an answer to the plea urged on behalf of the workmen that undertakings sought for by the management from the workmen assuring good conduct would not amount to any ''unfair trade practice''. It was the contention of learned Senior Counsel appearing for the management that undertakings sought from workmen when their prior incidents of misconduct could even afford a justification for closure of the company, not to speak of continuous lockout or denial of wages during such lockout instituted by the conduct of the workmen. Bank of India Vs. T.S. Kelawala and Others, was a decision that had laid down that even in the absence of provision in the contract of employment for deduction of wages for no work done, management would be entitled to deduct wages taking guidance from Payment of Wages Act or Shops and Establishment Act even if the respective enactments did not apply. The Hon''ble Supreme Court held that deductibility or extent of deductibility would depend on each case. This was in response to an argument that the deductions which were made for no work done or

by following go slow tactics that resulted a fall in production could be perfectly justified. The Hon''ble Supreme Court also held that mere physical presence in office was not enough. Employees must perform work for payment of wages. The dispensation in Bank of India''s case found another definition in a subsequent decision of the Hon''ble Supreme Court in Syndicate Bank and another Vs. K. Umesh Nayak, that held that strike resorted by bank employees during conciliation proceedings, despite bank''s circular for deduction of wages, the bank would be even justified in deducting the whole day''s wage for absence of work for some hours only. In para 24 and 25 of the judgment, the Hon''ble Supreme Court had held that:

... There is, therefore, nothing in the decisions of this Court in Churakulam Tea Estate and Crompton Greaves cases or the other earlier decisions cited above which is contrary to the view taken in T.S. kelawala. What is held in the said decisions is that to entitle the workmen to the wages for the strike period, the strike has both to be legal and justified. In other words, if the strike is only legal but not justified or if the strike is illegal though justified, the workers are not entitled to the wages for the strike period. In fact, in India General Navigation case the Court has taken the view that a strike which is illegal cannot at the same time be justifiable. According to that view, in all cases of illegal strike, the employer is entitled to deduct wages for the period of strike and also to take disciplinary action. This is particularly so in public utility services.

We, therefore, hold endorsing the view taken in T.S. Kelawala that the workers are not entitled to wages for the strike period even if the strike is legal. To be entitled to the wages for the strike period, the strike has to be both legal and justified. Whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Under the Act, the question has to be decided by the industrial adjudicator, it being an industrial dispute within the meaning of the Act.

H.M.T. Ltd. versus H.M.T. Head Office Employees'' Association and others (1996) II S.C.C. 319 was another decision of the Hon''ble Supreme Court which held that if the strike was found justified but illegal, wages for such period of illegal strike will not be payable.

VI. No scope for dilating point of reference

12. On the issue whether the strike dated 24th February, 1999 was illegal or justified, the attempt of learned Senior Counsel for the respondent to dilate the reference to the conduct of the workmen in adopting a go slow course may not be justified and the point for adjudication that the labor Court had framed itself referred to only the character of the strike that was resorted to on 24th February, 1999. That the workers had been adopting a go slow course may be independently relevant while examining the issue whether the management was justified in the lockout or its continuance but the issue of the illegality of the strike on 24th February, 1999 itself

could not be tested with reference to any other day preceding it as constituting a strike. Further none of the decisions referred to by learned Senior Counsel for the management referred to go slow activity itself as constituting a strike. It may result in other consequences, which were examined in decision of the Hon''ble Supreme Court such as departmental action or specific charges leveled against workmen for misconduct as was done in Workman of Motipur Sugar Factory case referred to supra and in the subsequent case in Engineering Mazdoor Sabha, Bombay and others. In the Bombay High Court case, the decision for lockout was examined in the context of the workers'' go slow act but did not it state that such activity would constitute a strike.

VII. Illegality of strike cannot be tested on ground not pleaded

13. Even as regards the contention that although there was no conciliation proceedings before the Board that could attract the bar of Section 23(a) of the Industrial Disputes Act, the learned Senior Counsel appearing for the respondent sought to urge that there was a violation of section 23(c). The illegality of the strike had never been urged at any point of time on such a basis and though it is only a legal issue still it required a specific focus through a specific pleading. The Labor Court was clearly in error in applying section 23(a) and entering a finding that the strike was illegal. It would be wrong to assume that workers were going on a strike only for matters, which were covered wholly under the agreement. If that was so, the parties must have been put on notice of such defense so that adequate evidence could have been placed on behalf of workmen. In the absence of specific plea in that regard, it would be unwise to characterize the strike as illegal by projecting a case that the issues regarding deduction of wages, closure of departments and out sourcing were all fully covered by the settlement and therefore, there could not have been a justification for the strike.

14. Learned Senior Counsel appearing for the workmen also pointed out that there were several other issues like change of factory hours which became necessary on account of the fact that the train timings were such that most of the employees who would arrive at the factory that was situate directly opposite the railway station had a time schedule of arrival at the station near the factory beyond the time when the factory hours started in the morning. The strike again had the genesis not merely in the case that arose on account of fall of production but on account of a pro-rata wage cut imposed on an assumption that the workmen had engaged in sporadic tool down strike on 8th December, 1998. If only the defense had been specific that the strike was illegal by application of Section 23(C), it would have been possible for evidence to be led on both sides of how the grievance of the workmen for effecting reduction in wages was justified or not. In the absence of specific pleading and want of notification for the call after due notice, it would be impermissible to make such an inference on a ground which was not urged before the Labor Court. Even in the reply given by the management to a notice of strike (Annexure P-2), the

management had not referred to the delay in commencement of work by 15 minutes and the pro-rata wage cut. There was no reference to fall in production and there was no proof adduced that during the relevant time, the production had fallen by any misconduct that could be attributed to the workmen. The finding of the labor Court that the strike was illegal is, therefore, unjustified and the same is set aside.

VIII. If strike was not illegal, lockout without notice was per se illegal

15. If the strike was not illegal, the declaration of lockout, the following day on 25th February, 1999, was in violation of the provisions of the Industrial Disputes Act. Admittedly, the lockout had not preceded the statutory period of notice u/s 22(2) and it was declared on the same day when the notice was issued on 25th February, 1999. To find whether the workmen were entitled to wages during the lockout period, it will still be relevant that the lockout was justified. It should be remembered that the strike period cannot be understood as any period other than 24th February, 1999 and the principle of "no work no pay" cannot apply for any period beyond 24th February, 1999.

IX. Justification for illegal lockout--manner of appraisal of evidence as made by the labor court, has it valid basis ?

16. If the lockout was illegal and the workmen were not permitted to resume work, the entitlement to wages will be tested not on "no work no pay" rule but on the justification for the lockout. If there was a justification, the workmen would not be entitled to wages even though the strike was legal and the lockout was illegal. If, on the other hand, the lockout was not merely illegal but it was also unjustified, the entitlement to wages by the workmen shall be the obvious corollary. The justification for the lockout as adverted to by the management would, therefore, require a deeper consideration as it has been dealt with under various heads-by the Labor Court, such as, sporadic strikes on various dates, late reporting for duty, change of shift timing, leaving work place, refusal to do alternative jobs, slow down of work, sabotage to the kneader machine, incident of assault of Shri Manoj Kumar Jain by a workman Lakshmi Chand on 2nd February, 1999 and earlier on 21st August, 1998. Of the several instances, which had been referred to test the justification of the lockout, the learned Senior Counsel made pointed arguments to only some them which alone are discussed hereunder.

(a) sabotage of machinery

17. On the contention that there had been a damage of the kneader machine done by the workmen, the observation of the Labor Court was that the Production Manager had reported the damage to the kneader machine to the personnel Department and on his inspection, he found that the electric panel of the kneader machine had been damaged. Another witness, Shri Vinod Kumar, Senior manager, Maintenance had also stated to the same effect and the labor Court relied on the vouchers for repairing the machine Ex. M-28, M-29 and the account statement Ex.

M-30 as proving the loss to the tune of Rs. 25,000. The learned Senior Counsel appearing for the workmen pointed out even the complaint Ex. M-27 dated 24th February, 1999 merely referred to the fact that the machinery was in a state of disuse and it had only stated that the lock of the control panel of the kneader No. 3 was found broken. Anon-functional machine that it was, there was hardly a need for sabotage. The complaint against talked only about the broken pieces of the lock and not the panel itself. Learned Counsel also referred to the bills that had been produced, referred to 24th February, 1999 as a date when the challan had been made and curiously the cash bill made a mention about the date of bill as 24th February, 2000. If the product had been purchased on the same day as on 24th February, 1999, the bill would also borne only the date of the year 1999 but M-28, the cash bill referred the date as 24th February, 2000 which excited the suspicion regarding the incident of sabotage. The finding of sabotage made by the Labor Court was clearly unjustified.

(b) Restrictive Trade practice

18. As regards the contention of the restrictive practice resorted to by workers by arriving late and falling short of achievable capacity of the machine, the contention of the learned Senior Counsel for the workmen was that there had been no proof at fall in the volume of production. The learned Senior Counsel referred to the fact that they had filed an application to produce the records relating to the finished products of canvass shoes, PT shoes, Hawai Chapal from January, 1997 to February, 1999, the strength of casual, temporary and regular workmen from 1996 to 1999, orders received from the market or from the customers from January 1996 to December 1999, stock of finished goods from January 1998 to February, 1999, record or log books for working of machine alleged to have been damaged by the workmen on 23rd or 24th February, 1999 and the said application was actually allowed by the Labor Court on 7th January, 2000 but it was still not produced by the management. On a specific plea that the records were not available in the factory, the witness Shri O.P. Gandhi (MW-9) pointed out to the fact that there had been no actual fall in production at any time prior to the date when the strike was declared on 24th February, 1999. By adverting to the evidence of Mr. O.P. Gandhi that finds mention even in the order of the Labor Court in the following words : "In cross-examination, the (O.P. Gandhi) admitted as regard that prior to 29th January, 1999, the production was normal and the Saldos of that time he had not brought and production of canvas shoes was 1500 per conveyor as per Saldos dated 3rd December, 1998, pertaining to particular work and suggestion was denied that production in 12/98 was also low". The learned Senior Counsel for the Management sought to contend with reference to the workshop production balance entries pertaining to the period February, 1999, the entries themselves showed that there had been any deliberate go slow work. Shri Mehta would reply pointing out that they only contained entries relating to the projected production and what was really achieved. It was always possible that there was a shortfall from the projected figures

to the actual realization and it would be wrong to infer that there had been any deliberate go slow process or deliberate late coming by workmen. Saldos contained references for reason of delay as well and it is possible to find that the reasons for delay for some days have been referred to "late start of machine", "slow work" by named individuals. There are diverse other reasons as well as found in the entries for example ''stop for quality'' (M-60), ''to clean latex tanks (M-63 to M-66, M-68 to M-71, M-73 to 76, M-78-M-81, M-83, M-84, M-88 to M-91), ''electric fault in chamber (M-85), ''article change (M-67), ''stop for substitution (M-87). There are definitely entries in some of the production balances that their had been slow production but that is not the only factor that has caused any fall. There are several other factors such as electrical fault, cleaning of some machineries etc. that had contributed to the fall in production. If there is a deliberateness on the part of the workmen that is attributed for the fall in production better documentary evidence ought to have been made available by producing the documents, which were sought for production namely the orders that had been received and how the management was unable to fulfill the orders resulting in a loss of Rs. 2 lacs as contended by them. Without the documentary evidence adduced, it is inconcealable that the workers must take the whole blame for whatever all in production that had been occasioned.
(c) Reports of Deputy Commissioner

19. Even as regards the reports of the Deputy Commissioner which referred to the vitiated atmosphere that was prevalent,--vide Ex. M-15 and M-16, the learned Senior Counsel appearing for the petitioners was perfectly justified in pointing out that the author of the reports themselves was not examined in Court and the workers did not have the benefit of cross-examining on the correctness of the statements found in the report. Again, if these statements were true, the fact that the Government ultimately made the reference for an adjudication must at least be understood to keep the issue open, for, when it was before the Labor Court parties must have joined in evidence and given a definite evidence about the so-called misconduct including the assault of some high officials in the management hierarchy. The Labor Court has merely relied on the report and adverted to the alleged assault on Shri Manoj Kumar Jain as having been proved on the evidence of Shri O.P. Gandhi. Shri Manoj Kumar Jain has also been examined as MW-10 who said on 2nd February, 1999 when he was present in the factory that he had directed Shri Lakshmi Chand to perform work in place of an absentee employee. He had later come to his table, lifted the table top and threw it upon him and threw also the telephone at him. The cross-examination had been carried out to the effect that Lakshmi Chand himself was 58 years of age and he was weak physically to even lift the table as alleged against him. It is true as the learned Senior Counsel for the respondent pointed out that it was also suggested in the cross-examination that Shri Manoj Kumar Jain himself had provoked him but one thing is that it does not seem appear to have been perceived as a major incident because no action was alleged to have been taken against Shri Lakshmi Chand on the alleged incident.

(d) Go slow activity of workmen, if established

20. On the contention that the workers had adopted go slow mode, the Labor Court had referred to the statements of Shri Mam Chand (WW-2) and Shri Kewal Nain Arora (WW-1) as having admitted that there had been a slow production during the relevant time. The learned Senior Counsel appearing for the petitioners read out in the Court their respective statements. While they had stated in general terms that Saldos was one of the indicators of the activity of the workmen, they had nowhere stated that they had deliberately adopted go slow mode as attributed to their evidence by the labor Court. The Labor Court also made pointed reference to Shri Bachu Giri (WW-5) as admitting that there was sufficient power with three generators in operation and therefore, the fall in production could not be attributed to any power cuts. On the contrary, I have already seen all the entries in the production charts citing the cause for low productivity to power cuts. The Labor Court has also referred to M-332, M-333, M-336, M-340 and M-350 as constituting proof of the fact that the workers had indulged in definite go slow process. I do not mean to subject each and every document to further examination in the light of the extensive work undertaken by the Labor Court on its finding that there had been a go slow attitude adopted by the workmen. Even while not upsetting finding in that regard, it is not possible to find any definite evidence that there had been fall in production that is attributable directly to such alleged go slow mode adopted by the workmen. As stated already, the most vital documents that could establish the actual fall in production and the loss that was alleged to have been occasioned by the workmen''s attitude, the financial statements 01 the difference between the higher demand and lower supplies, have not been produced despite orders by the Labor Court.

21. Several communications that were traded between the parties and the persistent stand taken by the management for its inability to lift the lockout only show that the workmen had admitted themselves as willing to resume the work but they were only insisting that they should be paid their wages during the period of lockout as a precondition for resumption. This offer had come as early as in April 1999 and if there was a dispute regarding the entitlement to wages for the lockout period, nothing prevented the management to lift the lockout and take the issue regarding the payment for the period of lockout to be taken as a point for adjudication. It is not merely the workers who ought to raise an industrial dispute and it was also perfectly possible for the management to press for a reference and seek an adjudication before the Labor Court on such an issue even in April 1999 when an occasion arose when the workers were willing to resume to work. They were not making any other condition than urging that they should also be paid their wages during the lockout. That has been precisely the manner for which the dispute ultimately got resolved through a memorandum of settlement made on 25th October, 1999. It was not as if the issue had been resolved. On the other hand, para 15 of the agreement states that the period of strike by the section of employees

prior to 25th February, 1999 as well as the period of lockout between the 25th February, 1999 till the date of settlement, though would not cause break in service for the purpose of Industrial Disputes Act, it would be without prejudice to the proceedings before the Hon''ble High Court as well as the Industrial Tribunal, Faridabad. Even the agreement dated 25th October, 1999 did not resolve the issue as to the entitlement or otherwise of the workmen to claim wages during the lockout period. There was no necessity to prolong it till 25th October, 1999 for such a course. The same could have been done even in April, 1999 when the workers had offered to resume and the issue relating to the entitlement to wages could have been kept open for an adjudication later. If the workmen were asking for wages for what according to them they were unduly denied, the management was insisting equally on a fragile premise that such lifting of lockout cannot be done without being compelled to pay wages during the said period. If the demand of the workmen was unreasonable, the rigid response by the management was equally untenable. Meaningful solution to a problem is always realized by an attitude of give and take. The person that gives, takes back from the other something; not the whole and in full measure, for, that would mean an attitude of give and give. If the lockout had proceeded for a one day strike, which the workers had declared after due notice, the fault lies more on the management than on the workmen. If the workmen have to take any blame it should for the go slow attitude alleged to have been accepted by the workmen in their working ways. It would be improper to place the entire blame on the workmen to deny them the wages for the entire period of lockout. In my view, justice would be best served if the workmen and the management share the responsibility and accord to them 50% of the wages for the entire period of lockout.

X. Conclusion

22. In the ultimate analysis, the finding of the Labor Court as regards the illegality of the strike is set aside. The strike period is taken only as on the date when it was declared on 24th February, 1999 and the reference was not for any period interior to that date as contended by the Senior Counsel for management. Indeed the reference itself was for an adjudication whether the strike on 24th February, 1999 was illegal and unjustified. If the strike was not illegal, the lockout was illegal for it did not conform to the requirements of law. The justification for the lockout did not simply exist after the workman sought for a truce and had expressed themselves willing to resume work even in April, 1999. The continuation of lockout till October, 1999 was not justified. The period for which the adjudication is sought is from 25th February, 1999 to 19th August, 1999, the date when the State Government directed the management to lift the lockout. The workmen would be entitled to 50% of the wages for the entire period. The award of the Labor Court is set aside and writ petition is allowed to the above extent. No costs.

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23. In view of the decision that I have taken that the lockout declared by the management was neither legal nor its continuance justified, the inevitable corollary is that the workmen are entitled to be granted the terminal benefits treating the period of lockout as being in lawful service. The Controlling Authority under the Payment of Gratuity Act, construing the Payment of Gratuity Act to be a beneficent Act and noticing that since there is no provision under the Act treating the period of strike or lockout to be treated as break in service, has directed that computation of gratuity should be made including the period of lockout to be also as period of service and has awarded Rs. 3836.85 with interest @ 8% for Shri Suresh Pal, which is the subject of challenge in C.W.P. No. 7932 of 2008 and ordered a like amount of Rs. 3509.13 with interest @ 8% for Shri Gobind Singh, which is the subject of challenge in C.W.P. No. 7973 of 2008. The respective orders are confirmed for a different reason in this case, in view of the decision that I have taken in the Writ Petition No. 7243 of 2002. The Appellate Authority before which the orders of the Controlling Authority were challenged had an additional reason to reject the claim of the management that there had been a non-compliance of the statutory requirement under the Payment of Wages Act while preferring the appeal of having to deposit 50% of the amount. It is urged on behalf of the petitioner before this Court that the amounts had not been deposited at the time of preferring the appeal due to wrong advice given by the counsel. 1 cannot countenance such a contention for the management, which is represented through lawyers and even the Appellate Authority has referred to the fact that at the time when the matter was taken up for arguments, he pointed out to the lapse on the part of the management but still the defect was not rectified.

24. The respective orders passed by the Controlling Authority and the Appellate Authority are perfectly justified and there is no scope for interference in the writ petitions.

25. The writ petitions are dismissed. Costs assessed at Rs. 2500 in each case against the writ petitioner in favour of the respective contesting respondents.