

Article 16(1) of the Constitution. For even assuming that they are so included, the present application must be rejected on the simple ground that the petitioners belong to a wholly distinct and separate class from Guards and so there can be no question of equality of opportunity in matters of promotion as between the petitioners and Guards.

The learned Counsel for the petitioners stated before us that this channel of promotion for Guards is peculiar to the Central Railways, and is not now to be found in the other Zones of Indian Railways. If that be the position, the matter may well deserve the attention of the Government; but this has nothing to do with the merits of the petition before us.

For the reasons mentioned above, we dismiss the application, but in view of all the circumstances, we order that parties will bear their own costs.

Petition dismissed.

FEROZ DIN AND OTHERS

v.

THE STATE OF WEST BENGAL

(S. K. DAS, A. K. SARKAR and M. HIDAYATULLAH, JJ.)

Industrial Dispute—Strike—Notice of discharge—Whether amounts to lock-out—Sanction to prosecute—Facts constituting the offence not shown on the face—Conviction on such sanction if bad—Industrial Disputes Act, 1947 (14 of 1947), ss. 27, 24, 2(1).

A company dismissed from its service four of the appellants, for taking part and instigating others to join, in an illegal slow-down strike in the Hot Mill Section of its works, which were a public utility service. On such dismissal the slow-down strike however gained strength. The company thereupon issued a notice dated April 8, 1953, to the workers of the Hot Mill that unless they voluntarily recorded their willingness to operate the plant to its normal capacity, before 2 p.m. of April 10, they would be considered to be no longer employed by the company. As a result forty workers recorded their willingness, but the rest did not make any response at all. The company then issued a second notice dated April 25, stating, *inter alia*, that the workers who did not record their willingness to work the plant to its normal capacity in terms of the previous notice dated April 8, had been considered to be no longer in service and their formal discharge

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from the company's service had been kept pending in order to assure to the fullest that no one who wanted to work normally was being discharged on circumstantial assumptions and calling upon the workers to record their willingness by April 28, 1953, to operate the plant to its normal capacity, and further intimating that failing this their names would be removed from the company's rolls and their discharge would become fully effective with all the implications of a discharge. After this notice the entire body of workers of the works except those engaged in the essential services went on strike. Thereafter, the company with the sanction of the Government filed a complaint under s. 27 of the Industrial Disputes Act against the appellants for having instigated and incited others to take part in an illegal strike.

The appellants were convicted. The appellants challenged the said conviction under s. 27 of the Act contending that the strike was not illegal as the strike had been in consequence of an illegal lock-out declared by the company by the said notices dated April 8 and April 25. The appellants further contended that the notices did not effect a discharge, but declared a lock-out and that even if the notices did effect a discharge, then also there was a lock-out, for a discharge is equally a lock-out. Finally the appellants challenged the propriety of the sanction under s. 34(1) of the Act to make the complaint as the sanction did not on the face of it refer to the facts constituting the offence.

Held, that on a construction of the notices they had the effect of discharging the workmen, and did not amount to a declaration of lock-out by the company.

The removal of the name of a worker from the Roll of the company was a formality which the notices said had been kept pending and this did not prevent the discharge having taken effect.

The words "refusal by an employer to continue to employ any number of persons employed by him" in s. 2(1) do not include the discharge of an employee.

Held, further that sanction under s. 34(1) of the Act would be good if it was proved by evidence that it had been granted after all the necessary facts had been placed before the sanctioning authority though the facts were not stated on the face of the sanction itself.

Presidency Jute Mills Co. Ltd. v. Presidency Jute Mills Co. Employees, Union, [1952] L.A.C. 62, approved

Gokulchand Dwarkadas Morarka v. The King, (1948) L.R. 75 I.A. 30, discussed.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 48 of 1958.

Appeal by special leave from the judgment and order dated July 4, 1956, of the Calcutta High Court,

in Criminal Revision No. 1005 of 1955, arising out of the judgment and order dated July 21, 1955, of the Additional Sessions Judge, Asansol, in Criminal Appeal No. 125 of 1955.

H. J. Umrigar and Sukumar Ghose, for the appellants.

S. M. Bose, Advocate-General for the State of West Bengal, A. C. Mitra, D. N. Mukherjee and P. K. Bose, for the respondent.

B. Sen, P. K. Chakravarty and B. N. Ghosh, for the interveners.

1959. November 25. The Judgment of the Court was delivered by

SARKAR J.—There are five appellants before us. Four of them were employees of a company called the Indian Iron & Steel Co., Ltd. and the fifth an outsider.

The appellants were convicted by a Magistrate of Asansol in West Bengal, of an offence under s. 27 of the Industrial Disputes Act, 1947, hereinafter referred to as the Act, for having instigated and incited others to take part in an illegal strike. Each appellant was sentenced to simple imprisonment for three months. On appeal by the appellants, the learned Additional Sessions Judge of Asansol, confirmed the order of the learned Magistrate. A petition to the High Court at Calcutta against the order of the learned Additional Sessions Judge by way of revision also failed. The appellants have now appealed to this Court with special leave. The respondent to this appeal is the State of West Bengal and the Company has been allowed to intervene.

The Company owns a factory at Burnpur near Asansol in which there is a Sheet Mill. The factory was declared by the Government to be a public utility service. There was a slow-down strike in the Hot Mill section of the Sheet Mill. The Company thereupon issued charge-sheets to some of its workers, including the four appellants in its employment, for taking part in the slow-down strike and instigating others to join it as also for other misconduct and

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after an enquiry, dismissed these four appellants from service. On such dismissal the slow-down strike gained in strength. Thereupon, on April 8, 1953, the Company issued a notice to the workers of the Hot Mill the relevant portion of which is set out below :

“ The workers of the Hot Mills (Sheet Mills) are hereby notified that unless they voluntarily record their willingness to operate the plant to its normal capacity they will be considered to be no longer employed by the Company, after which the Company will recruit other labour to man the Plant.

The workers must record their willingness before Friday, 10th April, 2-0 p.m., otherwise action as stated above will be taken.”

As a result of this notice forty workers of the Hot Mill recorded their willingness but the rest, who were about three hundred in number, did not make any response at all. In fact, on April 11, 1953, the workers in the entire Sheet Mill numbering about one thousand and three hundred, went on a sit-down strike which lasted till April 20, 1953.

On April 25, 1953, the Company issued another notice to the workers which is set out below :

“ In accordance with General Manager's Notice dated the 8th April, 1953, you have been considered to be no longer employed by the Company after 2 p.m. on Friday, 10th April, 1953, as you did not record your willingness before that date and time to operate the Plant to its normal capacity. Your formal discharge from Company's service had been kept pending in order to assure to the fullest that no one who wanted to work normally, was being discharged on circumstantial assumptions.

Now, however, there are no further reasons to believe that every one concerned has not all necessary information about the facts of the case and every opportunity to form a correct and legitimate opinion on the utterly irresponsible attitude adopted by some of the workers.

A copy of the notice dated the 22nd April, 1953, issued by the Directorate of Labour, Government of

West Bengal, which has already been widely circulated, is attached herewith, in English with translations in Bengali, Hindi and Urdu.

You are, therefore, hereby given a final Notice that if by 11 a.m. on 28th April, 1953, you do not record your willingness to operate the Plant to its normal capacity, your name will be removed from the Company's Roll and your discharge will become fully effective with all the implications of a discharge on grounds of serious breach of discipline, and your place will be filled by promotion from amongst the existing men or by engaging new men."

After this notice the workers of the entire factory, except those engaged in essential services, went on a strike on April 27, 1953, which lasted for twentytwo hours.

On May 19, 1953, the Company filed a complaint under s. 27 of the Act with the sanction of the Government granted on May 2, 1953. Out of this complaint the present appeal arises. The respondent's case is that the strikes of April 11, to April 20, 1953, and April 27, 1953, were illegal and the appellants had instigated them. The appellants have not in this Court challenged the finding of the Courts below that the strikes took place and that they had instigated them, but they contend that the strikes were not illegal.

Section 27 of the Act provides that a person who instigates or incites others to take part in, or otherwise acts in furtherance of a strike, which is illegal under the Act, commits an offence. The respondent's case is that the strikes were illegal under s. 24(1) of the Act which provides that a strike or a lock-out shall be illegal if it is commenced or declared in contravention of s. 22. There is no dispute that the strikes were in contravention of s. 22. The appellants rely on s. 24(3) of the Act under which a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal and say that the strikes had been in consequence of an illegal lock-out by the Company of the three hundred workers of the Hot

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Mill by the notices of April 8, and April 25. It is clear that if there was such a lock-out, it was illegal under s. 24(1) for it would be clearly in contravention of s. 22.

The question then is, was there a lock-out by the Company? The learned Advocate for the appellants first contends that the notices use the same words as are used in the definition of a lock-out in s. 2(1) of the Act and therefore by those notices the Company locked-out the men. We think that this argument is unfounded. The definition so far as is material reads, "lock-out means the refusal by an employer to continue to employ any number of persons employed by him." In the notices the words are "considered to be no longer employed" while the definition uses the words "refusal by the employer to continue to employ." Therefore, the words are not the same. Furthermore, the words used in the notices and in the definition have to be read in their respective contexts. For reasons to appear later, the words used in the notices meant a discharge of the employees from service while the words used in the definition do not contemplate such a discharge of the workmen.

The Courts below have come to the finding that by these notices the three hundred workers of the Hot Mill were discharged on April 10, 1953, and had not been locked-out. The learned Advocate for the appellants says that in this the Courts were wrong. He puts his arguments in two ways. First, he says that the notices did not effect a discharge till April 28, 1953, and they had in the meantime resulted in a lock-out of the workers from April 10, 1953, in the sense that their services had not been terminated but they had not been allowed to attend to their duties. Then he says that even if the notices effected a discharge, then also there was a lock-out, for a discharge is equally a lock-out within the meaning of its definition in the Act as the prevention by an employer of the workers from attending to their duties without discharging them, is.

Did the notices then effect a discharge? We agree with the Courts below that they did. The learned

Advocate for the appellants contends that the two notices taken together make it perfectly clear that there was no discharge of any employee prior to 11 a. m. of April 23, 1953. He says that the notice of April 25, shows that the notice of April 8, did not effect any discharge, for, the first mentioned notice says that the formal discharge had been kept pending and it also required the workers to record their willingness to operate the plant to its normal capacity by 11 a. m. on April 28, and further stated that failing this their names would be removed from the Company's roll and their discharge would become fully effective.

We are unable to read the notices in the way suggested. The notice of April 8, clearly stated that unless the workers notified their willingness to operate the plant to its normal capacity by 2 p. m. on April 10, they would be considered to be no longer in the employment of the Company. It plainly meant that on their failure to record the willingness by the time mentioned, the workers would cease to be in the employment of the Company, that is, in other words, discharged. Taken by itself, we do not think it is capable of any other meaning. We are also unable to agree that there is anything in the notice of April 25, which would show that a different meaning ought to be put on the words used in the notice of April 8, than they normally bear. The later notice also states that the workers had been considered to be no longer employed from April 10. Hence it maintains that the workers had been discharged on April 10. It no doubt says that the formal discharge had been kept pending but that only means, as is clear from the last paragraph of the notice, that the names of the workers had not been removed from the Company's roll. The word "formal" must have its due meaning; it emphasises that the real discharge had already taken place. We may also state that it has not been contended before us that there can be no discharge till a worker's name is removed from the roll and, without more, we do not think that we would have accepted that contention if made. The removal of the name of a worker from the roll follows his discharge and that is

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what was meant by the statement in the notice "that the formal discharge had been kept pending."

The circumstances which led to the issuing of the notice of April 25 also show that the workers had actually been discharged on April 10. What had happened was that the Labour Minister of the Government of West Bengal had intervened in the dispute between the Company and its workers. He met the workers and on April 21, 1953, that is, after the termination of the first of the two strikes, suggested certain terms for the settlement of the dispute. His suggestion was that "if the workers of the Hot Mills, who stand discharged from 2 p.m. of April 10, 1953, as a consequence of their disregarding the notice issued on 8th April, 1953, report themselves for duty immediately and record their willingness to operate the plant to its normal capacity, the Government would recommend their reinstatement to the Management." A copy of this suggestion was forwarded to the Company by the Government with a request to implement the recommendations contained in it with a further request to give the suggestion a wide publicity. The company circulated the Labour Minister's suggestion among the workers and to comply with his request to implement it, it issued the notice of April 25, to which a copy of the suggestion was attached. It is, therefore, clear that all that the Company intended to do by the notice of April 25, was to comply with the Government's suggestion and so to cancel the discharge of the workers of the Hot Mill which had already taken effect and reinstate them in their former employments if the workers carried out their part of the suggestion. This notice, therefore, does not support the contention that the workers had not been discharged till April 28, 1953.

We may also state that there is no evidence that prior to 2 p.m. of April 10, 1953, any employee had been prevented by the Company from attending to his duty.

The next question is whether a discharge of employees by an employer amounts to a lock-out. It is said that the words used in the definition of a lock-out,

namely, "the refusal by an employer to continue to employ any number of persons employed by him" cover the discharge of employees by an employer. The contention so raised was rejected by the Labour Appellate Tribunal in *Presidency Jute Mills. Co. Ltd. v. Presidency Jute Mills Co. Employees Union* (1). We are in entire agreement with the view there expressed.

It seems to us that to construe the definition as including a discharge would be against the entire tenor of the Act and also against the meaning of a lock-out as understood in industrial relations.

By virtue of s. 22 of the Act, in a public utility service no worker can go on strike nor can an employer lock-out his workmen without giving notice of strike or of lock-out within six weeks before the strike or lock-out as the case may be or within fourteen days of such notice or before the date fixed in such notice or during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion thereof. Section 23 prohibits strikes and lock-outs in other industrial establishments during the pendency of conciliation proceedings before a Board and for seven days thereafter. Section 24(1) makes a strike and a lock-out in contravention of ss. 10, 22 and 23, illegal. Section 24(2) provides that a strike declared in consequence of an illegal lock-out and a lock-out declared in consequence of an illegal strike shall not be illegal. Section 25 prohibits the spending of money on illegal strikes and lock-outs.

The Act therefore treats strikes and lock-outs on the same basis; it treats one as the counterpart of the other. A strike is a weapon of the workers while a lock-out that of the employer. A strike does not, of course, contemplate the severance of the relation of employer and employed; it would be strange in these circumstances if a lock-out did so.

Under the provisions of s. 22, a lock-out cannot be declared in a public utility service immediately; it can be declared only after the date fixed in the notice and cannot be declared within fourteen days of the giving of the notice. Now, if a discharge is included in a

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lock-out, an employer in such a service cannot discharge his employee, except after the time specified. Now, that would often make it impossible for the employer to carry on his business. It is conceivable that an employee may be guilty of such misconduct that his immediate discharge is essential. Indeed, there is no reason to think that such cases would be very infrequent. In such a case if an employer is prevented on pain of being made criminally liable under s. 27 from discharging the employee forthwith, irreparable mischief may be caused to his works or serious personal injury to himself or his other employees. We have no reason to think that the Act intended such a result.

Again, if a lock-out included a discharge, then there would be a conflict between ss. 22 and 23 on the one hand and s. 33 on the other. As has already been stated, ss. 22 and 23 prohibit a lock-out of workers during the pendency of the conciliation proceedings, therein mentioned, and seven days thereafter. According to the interpretation suggested by the learned Advocate for the appellants, during this time no worker could at all be discharged for a lock-out includes a discharge, it being remembered that the prohibition in the section is absolute. Under s. 33 however, an employer is prohibited during the pendency of a conciliation proceeding, from discharging a workman concerned in the dispute for any misconduct connected with such dispute save with the express permission of the authority before whom the proceeding is pending. So, if a lock-out includes a discharge, under ss. 22 and 23 there can be no discharge during the conciliation proceedings while under s. 33 there could be one with the permission of the authority conducting the proceeding. If a discharge amounted to a lock-out, an absurd result would thus be produced.

By an amendment made on October 2, 1953, certain provisions have been introduced into the Act which would show clearly that a lock-out as defined in s. 2(1), which section has been left unaltered by the amendment, was never intended to include a discharge of

workmen. We refer first to s. 2(oo) by which a new definition was introduced in the Act which, so far as is necessary for the present purpose, is in these words:

Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action.

If lock-out includes a discharge, then retrenchment as defined in s. 2(oo) would also clearly be a lock-out. Obviously, if that were so, then retrenchment would not have been separately defined. Again, under s. 25F, also introduced into the Act by the amendment, a workman may be retrenched by paying him wages for a month, the compensation provided, and on notice to the Government. If retrenchment was a form of lock-out, then there would clearly be a conflict between ss. 22 and 23 on the one hand and s. 25F on the other. Section 2(oo) and s. 25F were, no doubt, not in the Act at the date of the notices with which we are concerned, but since s. 2(l) was not amended it must be taken that its meaning remained after the amendment what it was before. Since the amendment made it clear that s. 2(l) did not include a retrenchment, it follows that that definition did not include a retrenchment prior to the amendment. If it did not then include a retrenchment, neither could it include a discharge, for, plainly, a retrenchment is but one form of discharge.

It, therefore, seems to us that the words "refusal by an employer to continue to employ any number of persons employed by him" in s. 2(l) do not include the discharge of an employee. We feel no difficulty in taking this view, for it does not seem to us that the words "refusal to continue to employ" in s. 2(l) plainly include a discharge. These words have to be read with the rest of the definition and also the word lock-out. The other parts of the definition contemplate no severance of the relation of employer and employed. The word "lock-out", as stated in the *Presidency Jute Mills Co's case* ⁽¹⁾, in its dictionary sense means refusal on the part of an employer to furnish work to his operatives except on conditions to

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be accepted by the latter collectively. Therefore, in our opinion, the rules of interpretation do not prevent us from giving to the words used in the definition the meaning "a refusal by the employer to allow any number of persons employed by him to attend to their duties without effecting a termination of service" as was done in the *Presidency Jute Mills Co's case* ⁽¹⁾, which would avoid one part of the Act coming in conflict with another.

The last point raised is about the propriety of the sanction. Section 34(1) of the Act provides,

No court shall take cognisance of any offence punishable under this Act save on complaint made by or under the authority of the appropriate Government.

The learned Advocate for the appellants relying on *Gokulchand Dwarkadas Morarka v. The King* ⁽²⁾, where a provision somewhat similar to s. 34(1) was considered by the Judicial Committee, contended that the sanction granted in the present case by the Government of the West Bengal to file the complaint against the appellants was bad as it had been granted without reference to the facts constituting the offence. It is true that the sanction does not on the face of it refer to the facts constituting the offence. There is, however, ample evidence in this case, which we did not understand the learned Advocate for the appellants to challenge and which clearly establishes that the entire facts connected with the offence had been placed before the sanctioning authority and the sanction had been granted on a consideration of them. The Judicial committee in the case above-mentioned itself observed that the sanction would be good if it was proved by evidence that it had been granted after all the necessary facts had been placed before the sanctioning authority though these facts might not have been stated on the face of the sanction itself. It therefore seems to us that the sanction in the present case is unobjectionable.

We feel, therefore, that the appeal must fail. We think it right however in the circumstances of this case and in view of the long lapse of time since the

(1) [1952] L.A.C. 62.

(2) (1948) L.R. 75 I.A. 30.

case started, to modify the sentence passed. In our view, a sentence of simple imprisonment for the period already served and a fine of Rs. 100 with simple imprisonment for a period of fifteen days in default of payment of the fine for each appellant will be sufficient in this case and we order accordingly.

Subject to this modification of the sentence, this appeal is dismissed.

Appeal dismissed.

THE STATE OF BIHAR

v.

RAI BAHADUR HURDUT ROY MOTI LALL

JUTE MILLS & ANOTHER

(and connected appeal)

(B. P. SINHA, C.J., P. B. GAJENDRAGADKAR,
K. SUBBA RAO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Sales Tax—Amount realised by registered dealer from sales outside the State—Forfeiture of such amount—Validity—Allowable deduction, meaning of—Bihar Sales Tax Act, 1947 (XIX of 1947), ss. 5, 6, 7, 8, 14A Proviso, 35, r. 19 proviso.

The respondent mills, a registered dealer under the Bihar Sales Tax Act, 1947 (Act III of 1947), was carrying on business of manufacture and sale of gunny bags, hessian and other jute products at Katihar. During the period April 1, 1950, to March 31, 1951, it sold and despatched its wares worth about Rs. 92,24,386-1-6 to dealers outside the State and realised a sum of Rs. 2,11,222-9-6 as sales-tax from them. In assessing the sales-tax payable by the said respondent for the relevant period the Superintendent of Sales Tax, Purnea, held that the said amount of sales-tax had been realised in contravention of s. 14A of the Act read with r. 19 of the Bihar Sales Tax Rules, and directed its forfeiture under the proviso to that section. The respondent challenged the validity of the said order under Arts. 226 and 227 of the Constitution. The High Court held that the proviso to s. 14A of the Act was *ultra vires* the State Legislature as it violated Arts. 20(1) and 31(2) of the Constitution and set aside the order of forfeiture and quashed the proceedings under s. 14A of the Act. The State of Bihar appealed to this Court. It was urged by way of preliminary objection on behalf of the respondent that since the proviso to s. 14A of the Act had no application to the facts of the case, there was no occasion to decide its constitutional validity. The contention of the appellant was that the proviso did apply to the respondent inasmuch

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