(3) he should not be a person falling under any of the four clauses, e.g., (1) to (4) mentioned in the definition of "workman' in s.2(s).

The question for consideration before the court was "whether a teacher in a school falls under any of the four categories, namely, a person doing any skilled work, technical work or clerical work." if he does not satisfy any one of the above descriptions he would not be a workman even though he is an employee of an industry as settled in *may and baker (india) ltd. Verses workmen.* In that case a person employed by a pharmaceutical firms as a representative (for canvassing orders), whose duties consisted mainly of canvassing orders and any clerical or manual work that he had to do was only incidental to his main work of canvassing, was held not a workman under s.2(s) of the act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward which were the only two classes of employees who qualified for being treated as 'workman' under the definition of the expression 'workman in the act, as it stood then. *As a result of the above decision a separate law entitled the sales promotion employees (conditions of service) act, 19 76 was passed and s. 2(s) was amended by including persons doing technical work as well as supervisory work.*

The court held that "the teachers employed by educational institutions whether the said institution are imparting primary, secondary, graduate or post-graduate education cannot be called as 'workmen' within the meaning of s.2(s) of the act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or noble vocation. A teacher educates children, and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the high court for taking the view that teachers cannot be treated as 'workmen' as defined under the act. It is not possible to accept the suggestion that having regard to the object of the act, all employees in an industry except those falling under the four exceptions (1) to (4) in s.2(s) of the act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *may and baker (india) ltd. Verses workmen* precludes us from taking such a view. *We, therefore, hold that the high court was right in holding that the appellant was not a 'workman' though the school was an industry in view of the definition of 'workman' as it now stands."*

Note: *a. Sundarambal* was affirmed by the seven-judge constitution bench in *h.r. Adyanthaya.*

H.r. Adyanthaya verses . Sandoz india ltd.

(in order to fall within the definition of workman, a per son must be employed to do any of categories of work mentioned in the main body of the definition)

issue

Whether the 'medical representatives' as they are commonly known, are workmen according to the definition of 'workman' under section 2(s) of the industrial disputes act, 1947?

decision of the supreme court

The definition of workman, as it stood originally when the industrial disputes act came into force w.e.f. 1-4-1947, read as follows:

"(s) 'workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical work for hire or reward and includes, for the purposes of any proceeding under this act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military, or air services of the crown."

It was amended by amending act 36 of 1956 which came into force from 29.8.1956 to read as follows:

"(s) 'workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed in implied, and for the purposes of any proceeding under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person."

The change brought about by this amendment was that the persons employed to do 'supervisory' and 'technical' work were also included in the definition for the first time by this amendment, although those who were employed in a supervisory capacity were so included in the definition provided their monthly wage did not exceed rs. 500. The definition of'workman[1] was further amended by amendment 46 of 1982 which was brought into force w.e.f. 21.8.1984. It read as—

"(s) 'workman[1] means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person..."

The first change brought about by this amendment was that whereas earlier only those who were doing unskilled or skilled manual work were included in the said definition, now those who did any unskilled or skilled work, whether manual or not, came to be included in it. The second and the most important change that was brought about was that those persons who were employed to do 'operational' work were also brought within the fold of the said definition. Other changes which the definition of 'workman' underwent are not relevant for the instant case.

The court gave reference of a number of decided cases some of which are as follows:

In *may & baker (india) ltd. Verses workmen,* air 1967 sc 678, the court found that the main work of the medical representatives was that of canvassing sales. Any clerical or manual work that he had to do was incidental to the said main work, and could not be more than a small fraction of the time for which he had to work. In the

circumstances the court held that medical representatives are not workmen under the act. The dispute in question has arisen prior to 6-1-1956.

In *western india match co. Ltd. Verses workmen* popularly known as wimco case), it was held that sales is as much an essential part of an undertaking which is established for the manufacture and sale of a product. Employees working in the sales office were held to be workmen as 75% of their work was clerical in the instant case.

In *burniah shell oil storage & distribution co. Of india ltd. Verses burnt ah shell management staff association,* air 1971 sc 922, the dispute in question had arisen prior to 28-10-1967. It was held that the main job of the sales engineering representatives and district sales representatives was canvassing and obtaining orders. On these facts, the court held that the work they were doing was neither manual nor clerical nor technical nor supervisory, and further added that the work of canvassing and promoting sales could not be included in any of the said four classifications. Thus they were held to be not workmen under the industrial disputes act, 1947.

In *s.k. Shanna verses mahesh chandra,* (1983) 4 scc 214, the dispute in question arose on account of dismissal of the appellant-development officer w.e.f. 8-2-1969. The three-judge bench of the court did not refer to the earlier decision in *may & baker, wimco* and *burmah shell* cases. The court found that the principal duty of a development 6fficer was to organise and develop the business of the corporation in the area allotted to him, and for that purpose, to recruit active and reliable agents, to train them, to canvass new business and to render post-sale services to policy holders even so,, he had no authority either to appoint the agents or to take disciplinary action against them. He does not supervise the work of the agents though he was required to train them and assist them. He was to be friend, philosopher and guide of the agents working within his jurisdiction and no more. The agents are not his subordinates. He has no subordinate staff working under him. Thus he was not engaged in any administrative or managerial work and therefore, he was a workman within the meaning of the id act.

In *ved prakash gupta verses delton cable india (?) Ltd.,* (the dispute had arisen on account of dismissal of security inspector. On the facts, the court held that the substantial duty of the employer was that of a security inspector at the gate of the factory and it was neither managerial nor supervisory in nature in the sense in which those terms are understood in industrial law. This decision did not refer to *may & baker, wimco* and *burmah shell* cases and instead followed the ratio of the earlier decision in *s.k. Verma* case.

The legal position was summarised by the court as follows:

"till 29-8-1956 the definition of workman under the id act was confined to skilled and unskilled manual or clerical work and did not include the categories of persons who were employed to do 'supervisory' and 'technical' work. The said categories came to be included in the definition w.e.f. 29-8-1956 by virtue of the amending act 36 of 1956. It is, further, for the first time that by virtue of the amending act 46 of 1982, the categories of workman employed to do 'operational' work came to be included in the definition. What is more, it is by virtue of this amendment that for the first time those doing non-manual unskilled and skilled work also came to be included in the definition with the result that the persons doing skilled and unskilled work whether manual or otherwise, qualified to become workmen under the id act."

The court further said:

"we thus have three three-judge bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two two-judge bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge bench decisions which have without reference to the decisions in *may & baker, wimco* and *burmah shell* cases have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the id act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. *Hence the position in law as it obtains today is that a person to be a*

workman under the id act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation"

The court then -referred to the relevant provisions of the sales promotion employees (conditions of service) act, 1976 (the 'spe act') which came into force w.e.f. 6-3-1976 and applied forthwith to every establishment engaged in pharmaceutical industry by virtue of its s. 1(4). The definition of sales promotion employee in clause (d) of section 2(d) of spe act *as it originally enacted read* as follows:

"(d) 'sales promotion employee' means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, and—

(1) who draws wages (being wages, not including any commission) not exceeding seven hundred and fifty rupees per mensem; or

(2) who had drawn wages (being wages, including commission) or commission only, in either case, not exceeding nine thousand rupees in the aggregate in the twelve months immediately preceding the months in which this act applies to such establishment and continues to draw such wages or commission in the aggregate, not exceeding the amount aforesaid in a year.

But does not include any such person who is employed or engaged mainly in a management or administrative capacity."

The aforesaid definition was expanded by act 48 of in 1986 w.e.f. 6-5-1987, so as to include all sales promotion employees without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding rs. 1600 per mensem and those employed or engaged mainly in managerial or administrative capacity.

Section 6(2) of the spe act made the provisions of the industrial disputes act, as in force for the time being, applicable to the medical representatives stated as follows:

"(2) the provisions of the industrial disputes act, 1947 (14 of 1947), as in force tx>r the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of the act and for the purposes of any proceeding under that act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee was has been dismissed, discharged or retrenched in connection with, or as, a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute."

In appeared to the court that the spe act was brought on the statute books as a result of the court's decision in *may & baker* case.

The court held that the classification made between the two categories sales promotion employees, viz, those drawing wages upto a particular limit and those drawing above it, is fairly intelligible. The object of the legislation further appears to be to give protection to the weaker sections of the employees belonging to the said category. The extension of the protective umbrella could not as a matter of right, therefore, be demanded by those who draw more wages. Even in the definition of workman under id act as well the spe act, the classification of those employed to do supervisory work has been made on the basis of their monthly income although the work done by the two sections of the workmen is the same, viz, supervisory and those drawing wages above the particular limit has been excluded from the said definition. Thus the definition clause was held not discriminatory.

***S.k.* Maini verses . M/s caroria sahu co. Ltd.**

(an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees.)

Facts

The appellant shri s.k, maini was working as the shop manager/in-charge of the respondent-company m/s. Carona sahu company limited. On an allegation of misconduct against *the* appellant, a domestic enquiry was caused by the respondent-company and by order dated march 12, 1981 the service of the appellant was terminated, on september 28, 1981, government of punjab referred the following dispute for adjudication to the labour court, jalandhar: "whether the termination of service of shri s.k. Maini is justified and in order? If not to what relief and amount of compensation is he entitled?

Before the labour court a preliminary[7] objection was raised by the respondent-company as to the maintainability of the said reference by contending that shri s.k. Maini was not a workman within the definition of section 2(s) of the industrial disputes act, 1947 because being a shop manager/!n-charge of the shop, he had been discharging mainly managerial and administrative functions and had been supervising the works of other employees subordinate to him for running the said shop and even if he was a supervisor at the relevant time, shri s,k. Maini was drawing a salary of more than rs. 500 per month. Hence, he could not be held to be a workman under the industrial disputes act. Accordingly, the reference was not maintainable and shri maini was not entitled to get any relief from the labour court.

The labour court, jalandhar, *inter alia* came to the finding that although shri mains was a shop manager/i n-charge of the shop but his duties were mainly clerical and he had no independent authority to appoint or discharge the employees and to charge-sheet them and his functions could not be held mainly to be supervisory or managerial. Accordingly, shri maini was a workman under the industrial disputes act

As aforesaid, the respondent-company challenged the validity of such award of the labour court before the punjab and haryana high court, the learned single judge of the punjab and ha[r]yana high court *inter alia* came to the finding after analyzing the powers a < j responsibilities of shri mains as shop manager/in charge and evidence on record, that the predominant duties of shri maini were administrative or managerial and to some extent supervisory in nature. It was also held by the learned single judge that the power to employ or dismiss or even initiate disciplinary action was not the sole criterion to decide the true nature of duties of a manager or administrator. Such test was relevant to determine whether the duties were supervisory in nature. The learned judge was of the view that although some of the duties like maintaining accounts, filing certain forms were clerical in nature, but the major job of the employee concerned was administrative or managerial. Accordingly, the employee was not workman under section 2(s) of the industrial disputes act,

Issue

Whether the appellant was a workman under the id act, 1947?

Decision of the supreme court

The court held that the functions of the appellant appear to be administrative and managerial by virtue of his being in charge of the shop, he was the principle officer-in-charge of the management of the shop. It is true

that he himself was also required to do some works of clerical nature but by and large being in charge of the management of the shop he had been principally discharging administrative and managerial work. A manager or an administrate e officer is generally invested with the power of supervision in contradistinction to the stereotype work of a clerk. Within the authority indicated in the terms and conditions of his service, the appellant was authorised to take decision in the matter of temporary appointments and in taking all reasonable steps incidental to the proper running of the shop. Precisely for the said reason, the appellant had signed the statutory forms as an employer, ft should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees, hence, the high court was justified in holding that the appellant was not a workman under s. 2(s) of the industrial disputes act, 1947."

The designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incrementally done. A manager or administrative officer is generally vested with the power of supervision in contradiction to the stereotype work of a clerk, f f the principal function is of supervisory nature, the employee concerned will not be workman only if he draws a particular quantum of salary at the relevant time as indicated in s. 2(s).

The court said:

"in the instant case, it, however, appears to us that shri maini as manager/ . Incharge of the shop was made responsible and liable to make good such amount of credit whether such sale on credit had been made by him or by any other member of the staff in employment under him with or without his knowledge. Under the terms and conditions of service, he was asked to take charge of the shop to which his service was transferred. Mr. Maini, under the terms and conditions of service, was required to be held responsible and liable for any loss suffered by the company due to deterioration of the quality of the stock or any part thereof and loss of any of the other articles lying in the shop caused by reason of any act of negligence and for omission to take any precaution by the employees. Mr. Maini was also required to notify the company by trunk call and/or telegram not later than three hours after the discovery in the said shop of any fire, theft, burglary, loot or arson. He was required to investigate into the matter immediately and get the cause and amount of loss established by local authorities. Mr. Maini as in-charge of the shop was required to keep and maintain proper accounts as approved by the company indicating the exact amount to be paid from the receipts from the respective staff. Under clause xiii of the terms and conditions of the service, mr. Maini would remain fully responsible to the company for damages or loss caused by acts or commission of the loss of the employees of the shop. Under clause xv of the terms and conditions of service, the shop in-charge was required to keep himself fully conversant with all the regulations in force which may come into force from time to time with regard to octroi, sales tax and shops and commercial establishments act and/or any other local regulation applicable to the shop. Clause xxi indicates that non-compliance with any of the local or state acts or central acts would be viewed seriously and manager would be held responsible for any fine/penalty imposed and/or prosecution launched against the company. It also appears that in the event of a salesman being absent, the shop in-charge is empowered to appoint temporary helper for the said period to work as acting salesman. Similarly, in the event of helper being absent, the shop manager is also empowered to appoint part-time sweeper and to entrust the work of a helper to a sweeper. Such functions, in our view, appear to be administrative and managerial. By virtue of his being in-charge of the shop, he was the principal officer-in-charge of the management of the shop. We therefore find justification in the finding of the high court that the principal function of the appellant was of administrative and managerial nature. It is true that he himself was also required to do some works of clerical nature but it appears to us that by and large shri maini being in-charge of the management of the shop had been principally discharging the administrative and managerial work. A manager or an administrative officer is generally invested with the power of supervision in contradiction to the stereotype work of a clerk."

G.b. Pant university of agriculture & technology verses state of u.p.

(*workers of cafeteria, required by regulations to be maintained in a residential university and to be compulsorily used by the resident-students, were held to be employees of the university.)*

Facts

G.b. Pant university of agriculture and technology established under the u.p. Agricultural university act, 1958 happens to be a residential university having about 14 hostels to provide accommodation to the students with a cafeteria to provide food services to the residents of the hostels and others. There are about 170 employees working in these cafeterias and these are the employees who claim regulations of the service as regular employees of the university which, however, stands negated by the university authority. The records depict that the reason of refusal to accept such a claim, the disputes were referred under two separate references in terms of section 4(k) of the uttar pradesh industrial disputes act in november 1991 which were registered as references nos. 141 and 142 of 1991. The labour court upon acceptance of the claim of the employees in no certain terms found the entitlement of the employees of the cafeteria and declared the latter to be the regular employees of the university from the date of the award and held entitled to receive the same salary and other benefits as the other regular employees of the university. The university, however, being aggrieved by the award moved two writ petitions by way of challenges to the two awards under article 226 of the constitution. The high court also on a detailed scrutiny of the regulations and other materials on record dismissed the writ petitions with an observation that the impugned award of the case and do not suffer from any error of law.

Issue

Whether the workers of cafeteria were employees of the university? Decision of the supreme court

The court felt it expedient to quote a few of the regulations which unmistakably depict total control of the university in the matter of running and maintenance of the cafeteria. There are given below:

"54. It shall be compulsory for each student residing in a hostel to join the cafeteria of that hostel unless otherwise permitted by the chief warden of the hostel on the request of the guardian of the student, and the recommendation of the warden of that hostel to take food with his guardian. In that event the chief warden shall inform all officers concerned of the university, for example, comptroller, dean student welfare, hostel warden, etc.

76. The comptroller of the university shall operate the [4]gbpua food services account', issue cheques, maintain the cash book and classified accounts (unit wise/ head wise) of income and expenditure as well as students' ledgers in his office like other accounts of the university. In addition to arranging timely payment of the cafeteria bills duly authorised by the warden and ensuring recovery of the cafeteria dues from the students and staff members concerned the comptroller shall be responsible for getting the cafeteria accounts audited cent-per cent regularly.

80. The accounts clerk-cum-storekeeper of the hostel cafeteria shall be responsible for the proper and up-to-date maintenance of the cafeteria stores, store records and account books including daily-menu book, cash book, consumable stock book, daily preparation and sales register, cash credit and coupon transaction

register, store daybook *(roznamcha)* indents, challans, bill register, daily-sales sheets, cash memo book, bill book, etc. Under the direct supervision, control and guidance of the hostel manager. His functions and duties shall be as follows:

82. The other cafeteria staff including tea man, head cook, bearers, etc. Shall work in accordance with the instructions of the hostel manager/warden. The duties of these staff members shall be defined/prescribed by the warden of the hostel,

88. The accounts of the warden's office (bills and vouchers) shall be taken by the hotel manager to the office of the comptroller for scrutiny and checking.

92. The entire cafeteria staff including tea man, head cook, bearers, etc. Shall work in accordance with the instructions of the hostel manager/warden. The duties of these staff members shall be defined/prescribed by the warden of the hostel.

88. The accounts of the warden's office (bills and vouchers) shall be taken by the hotel manager to the office of the comptroller for scrutiny and checking.

92. The entire cafeteria staff shall work under the direct supervision of the warden/assistant warden in accordance with the advice of the food committee and under the administrative control of the chief warden. All cases of appointments, termination of service and other punishments and promotions, rewards etc. Shall be dealt with by the chief warden in consultation with the warden and the food committee,

93. (1) all the appointments of cafeteria staff would be made by the food committee of the hostel with the approval of the chief warden

(2) the leave, annual increments, uniform, travelling allowance, etc. To the cafeteria staff shall be governed in accordance with the policies laid down by the central food committee.

106. (1) the bills/vouchers/imprest/temporarily advance adjustment accounts and monthly food accounts duly passed by the respective food secretary/chairman, food committee to their entire satisfaction and entered in the food secretary/ chairman, food committee to their entire satisfaction and entered in the food provision control register shall be sent to the comptroller directly for scrutiny and payment/adjustment/recovery of dues expeditiously. The wardens, hostel managers and the respective food secretaries will be fully responsible for making stock entries of all purchases made in respect of their hostels. The payment will be made only if a certificate in the following form is given on the bill (rubber stamp for which could be got made for convenience):

'Certified that the goods as per specification have been received and entered in the stock books,'

(2) the warden shall have full financial and administrative control of their hostel cafeteria funds and be responsible for up-to-date maintenance control of their hostel cafeteria funds and be responsible for up-to-date preparation of monthly food accounts and submission of monthly recovery lists accurately within time and according to the procedure prescribed in the hostel cafeteria regulations. The warden/hostel manager/food secretary concerned will be fully responsible for checking of rates charged in the bills and payments will be authorised on the basis of the certification.

107. (1) similarly, the preparation of vouchers for adjustment account of temporary advances and recoupment of the permanent advance shall be done by the accounts clerk-cum-stockeeper/hostel manager which shall be checked and signed by the food secretary, warden expeditiously and the warden shall ensure that no cash is drawn and retained by the hostel cafeteria when it is not required for its immediate expenditure.

109. The hostel cafeteria's accounts clerk-cum-storekeeper shall be responsible to the warden/chief warden on the one hand and on the other be also responsible to the comptroller for correctness of the cafeteria accounts."

The workers of the cafeteria, required by regulations to be maintained by the residential university and to be compulsorily used by the resident-students, were held to be employees of the university. The university was directed to regularize services of the employees in terms of the award passed by the labour court by 31-8-2000 so as to entitle the employees of the cafeteria to obtain the monthly wages on a par with the other employees of

the university, as directed by the labour court. The arrears of salary, if there be any payable, as per the said directions, as confirmed by the high court, be paid to the canteen staff by twelve equal monthly instalments along with the regularised salary.

Management of chandramalai estate, ernakulam verses its workmen

(it *will not be right for the labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects.)*

Facts

On august 9, 1955 the union of the workmen submitted a charter of demands to the management. Though the management agreed to fulfil some of the demands the principal demands namely price of rice and cumbly allowance remained unsatisfied. The dispute was referred for conciliation and the conciliation was held on november 30, 1955 but it failed. On the following day the union gave a strike notice and the workmen went on strike from december 9, 1955. Thus the union did not choose to wait for a reference to the industrial tribunal. It was urged on behalf of the appellant that there was nothing in the nature of the demands to justify, such hasty action. As regards the cumbly allowance the appellant had paid nothing since 1949 when it was first stopped till the union raised it on august, 1955. The grievance for collection of excess price of rice was more recent. The strike ended on jan. 5, 1956. Government had referred the dispute for adjudication to the industrial tribunal. The tribunal granted the workmen's demand on all the issues referred to it including the cumbly allowance (allowance for blankets) and reimbursement for excess charge of price of rice. The tribunal also held that the strike was half justified and half unjustified and, therefore, ordered the management to pay workmen 50% of their total emoluments for the strike period. Issues

(1) was the price realized by the management for the rice sold to the workers after decontrol excessive and if so, are the workers entitled to get refund of the excessive, value so collected?

(2) were the workers entitled to get cumbly allowance (chandermali estate was situated at a high attitude) which was customary for the estates in that region to pay?

(3) are the workers entitled to get wages for the period of the strike? Decision of the supreme court

The supreme court agreed with the tribunal in respect of refund of excessive value of rice collected and payment of cumbly allowance, but did not allow any payment for the strike as it held that the strike was unjustified. In the opinion of the court workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the government make a reference. They did not wait at all. The conciliation efforts failed on november 30,1955, and on the very next day the union made its decision on strike and sent the notice of the intended strike from 9th december 1955, and they actually went on strike from that date. The government acted quickly and referred the dispute on january 3, 1955. It was after this that the strike was called off. Therefore, it was held that the strike was totally unjustified. The court agreed with the management that there was nothing in the demands to justify such hasty action. In the course of its judgement the court observed-

"while on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for the labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to

expect labour to wait till after asking the government to make a reference. In such cases, strike even before such a request has been made well be justified. The present is not however one of such cases."

Syndicate bank* verses *k. Umesh nayak

P.b. Sawant, j. - these appeals have been referred to the constitution bench in view of the apparent conflict of opinions expressed in three decisions of this court - a three-judge bench decision in ***churakulam tea estate (p) ltd.* Verses *workmen*** and a two-judge bench decision in ***crompton greaves ltd.* Verses *workmen*** on the one hand, and a two-judge bench decision in ***bank of india* verses *t.s. Kelawala*** on the other. The question is whether workmen who proceed on strike, whether legal or illegal, are entitled to wages for the period of strike? In the first two cases, viz., ***churakulam tea estate*** and ***crompton greaves***, the view taken is that the strike must be both legal and justified to entitle the workmen to the wages for the period of strike whereas the latter decision in ***t.s. Kelawala*** has taken the view that whether the strike is legal or illegal, the employees are not entitled to wages for the period of strike. To keep the record straight, it must be mentioned at the very outset that in the latter case, viz., ***t.s. Kelawala*** the question whether the strike was justified or not, was not raised and, therefore, the further question whether the employees were entitled to wages if the strike is justified, was neither discussed nor answered. Secondly, the first two decisions, viz., ***churakulam tea estate*** and ***crompton greaves*** were not cited at the bar while deciding the said case and hence there was no occasion to consider the said decisions there. The decisions were not cited probably because the question of the justifiability or otherwise of the strike did not fall for consideration. It is, however, apparent from the earlier two decisions, viz., ***churakulam tea estate*** and ***crompton greaves*** that the view taken there is not that the employees are entitled to wages for the strike period merely because the strike is legal. The view is that for such entitlement the strike has both to be legal and justified. In other words, if the strike is illegal but justified or if the strike is legal but unjustified, the employees would not be entitled to the wages for

The strike period. Since the question whether the employees are entitled to wages, if the strike is justified, did not fall for consideration in the latter case, viz., in ***t.s. Kelawala***, there is, as stated in the beginning, only an apparent conflict in the decisions. ***Ca no. 2710 of 1991****:*

3. On 10-4-1989 a memorandum of settlement was signed by the indian banks' association and the all indian bank employees' unions including the national confederation of bank employees as the fifth bipartite settlement. The appellant-bank and the respondent-state bank staff union through their respective federations were bound by the

Said settlement. In terms of clauses 8(*d*) and 25 of the memorandum of the said settlement, the appellant-bank and the respondent-staff union had to discuss and settle certain service conditions. Pursuant to these discussions, three settlements were entered into between the parties on 9-6-1989. These settlements were under section 2(*p*) read with section 18(1) of the industrial disputes act, 1947 (the 'act'). Under these settlements, the employees of the

Appellant-bank were entitled to certain advantages over and above those provided under the all india bipartite settlement of 10-4-1989. The said benefits were to be given to the employees retrospectively with effect from 1-11-1989. It appears that the appellant-bank did not immediately implement the said

settlement. Hence, the employees' federation sent telex message to the appellant-bank on 22-6-1989 calling upon it to implement the same without

Further loss of time. The message also stated that the employees would be compelled to launch agitation for implementation of the settlement as a consequence of which the working of the bank and the service to the customers would be affected. In response to this, the bank in its reply dated 27-6-1989 stated that it was required to obtain the government's approval for granting the said extra benefits and that it was making efforts to obtain the government's approval as soon as possible. Hence the employees' federation should, in the meanwhile, bear

It with. On 24-7-1989 the employees' federation again requested the bank by telex of even date to implement the said settlement forthwith, this time, warning the bank that in case of its failure to do so, the employees would observe a day's token strike after 8-8-1989. The bank's response to this message was the same as on the earlier occasion. On 18-8-1989, the employees' federation wrote to the bank that the settlements signed were without any

Precondition that they were to be cleared by the government and hence the bank should implement the settlement without awaiting the government's permission. The federation also, on the same day, wrote to the bank calling its attention to the provisions of rule 58.4 of the industrial disputes (central) rules, 1957 (the 'rules') and requesting it to forthwith forward copies of the settlements to the functionaries mentioned in the said rule. By its reply

Of 23-8-1989 the bank once again repeated its earlier stand that the bank is required to obtain government's approval for granting the said extra benefits and it was vigorously pursuing the matter with the government for the purpose. It also informed the federation that the government was actively considering the proposal and an amicable solution would soon be reached and made a request to the employees' federation to exercise restraint and bear with it so that their efforts with the government may not be adversely affected. By another letter of

The same date, the bank informed the federation that they would forward copies of the agreements in question to the authorities concerned as soon as the government's approval regarding implementation of the agreement was received. The federation by the letter of 1-9- 1989 complained to the bank that the bank had been indifferent in complying with the requirements of the said rule 58.4 and hence the federation itself had sent copies of the

Settlements to the authorities concerned, as required by the said rule.

4. On the same day, i.e., 1-9-1989 the federation issued a notice of strike demanding immediate implementation of all agreements/ understandings reached between the parties on 10-4-1989 and 9-6-1989 and the payment of arrears of pay and allowances pursuant to them. As per the notice, the strike was proposed to be held on three different days beginning from 18-9-1989. At this stage, the deputy chief labour commissioner and conciliation officer (central), bombay wrote both to the bank and the federation stating that he had received information that the workmen in the bank through the employees' federation had given a strike call for 18-9-1989. No formal strike notice in terms of section 22 of the act had, however, been received by him. He further informed that he would be holding conciliation proceedings under section 12 of the act in the office of the regional labour commissioner,

Bombay on 14-9-1989 and requested both to make it convenient to attend the same along with a statement of the case in terms of rule 41(*a*) of the rules.

5. The conciliation proceedings were held on 14-9-1989 and thereafter on 23-9-1989. On the latter date, the employees' federation categorically stated that no dispute as such existed.

The question was only of implementation of the agreements/understandings reached between the parties on 10-4-1989 and 9-6-1989. However, the federation agreed to desist from direct action if the bank would give in writing that within a fixed time they will implement the agreements/understandings

and pay the arrears of wages etc. Under them. The bank's representatives stated that the bank had to obtain prior approval of the government for
Implementation of the settlements and as they were the matters with the government for obtaining its concurrence, the employees should not resort to strike in the larger interests of the community. He also pleaded for some more time to examine the feasibility of resolving the matter satisfactorily. The conciliation proceedings were thereafter adjourned to 26-9-1989. On this date, the bank's representatives informed that the government's approval had not till then been obtained, and prayed for time till 15-10-1989. The next meeting was held on 27-9-1989. The conciliation officer found that there was no meeting ground and no settlement could be arrived at. However, he kept the conciliation proceedings alive by stating that in order to explore the possibility of bringing about an understanding in the matter, he would further hold discussions on 6-10-1989.
6. On 1-10-1989, the employees' federation gave another notice of strike stating that the employees would strike work on 16-10-1989 to protest against the inaction of the bank in implementing the said agreements/settlements validly arrived at between the parties. In the meeting held on 6-10-1989, the conciliation officer discussed the notice of strike. It appears that in the meanwhile on 3-10-1989 the employees' federation had filed writ petition no.
13764 of 1989 in the high court for a writ of mandamus to the bank to implement the three settlements dated 9-6-1989. In that petition, the federation had obtained an order of interim injunction on 6-10-1989 restraining the bank from giving effect to the earlier settlement dated 10-4-1989 and directing it first to implement the settlements dated 9-6-1989. It appears further that the employees had in the meanwhile, disrupted normal work in the bank and had
Resorted to gherao. The bank brought these facts, viz., filing of the writ petition and the interim order passed therein as well as the disruption of the normal work and resort to gheraos by the employees, to the notice of the conciliation officer. The meeting before the conciliation officer which was fixed on 13-10-1989 was adjourned to 17-10-1989 on which date, it was found that there was no progress in the situation. It was on this date that the employees' federation gave a letter to the conciliation officer requesting him to treat the conciliation proceedings as closed. However, even thereafter, the conciliation officer decided to keep the conciliation proceedings open to explore the possibility of resolving the matter amicably.
7. On 12-10-1989 the bank issued a circular stating therein that if the employees went ahead with the strike on 16-10-1989, the management of the bank would take necessary steps to safeguard the interests of the bank and would deduct the salary for the days the employees would be on strike, on the principle of "no work, no pay". In spite of the circular, the employees went on strike on 16-10-1989 and filed a writ petition on 7-11-1989 to quash the circular of 12-10-1989 and to direct the bank not to make any deduction of salary for the day of the strike.

8. The said writ petition was admitted on 8-11-1989 and an interim injunction was given by the high court restraining the bank from deducting the salary of the employees for 16-10-1989.
9. Before the high court, it was not disputed that the bank was a public utility service and as such section 22 of the act applied. It was the contention of the bank that since under the provisions of sub-section (1)(*d*) of the said section 22, the employees were prohibited from resorting to strike during the pendency of the conciliation proceedings and for seven days after the conclusion of such proceedings, and since admittedly the conciliation
Proceedings were pending to resolve an industrial dispute between the parties, the strike in question was illegal. The industrial dispute had arisen because while the bank was required to take the approval of the central government for the settlements in question, the contention of the employees was that no

such approval was necessary and there was no such condition incorporated in the settlements. This being an industrial dispute within the meaning of the
Act, the conciliation proceedings were validly pending on the date of the strike. As against this, the contention on behalf of the employees was that there could be no valid conciliation proceedings as there was no industrial dispute. The settlements were already arrived at between the parties solemnly and there could be no further industrial dispute with regard to their implementation. Hence, the conciliation proceedings were *non est*. The provisions of
Section 22(1)(*d*) did not, therefore, come into play.
10. The learned single judge upheld the contention of the bank and held that the strike was illegal, and relying upon the decision of this court in ***t.s. Kelawala*** case dismissed the writ petition of the employees upholding the circular under which the deduction of wages for the day of the strike was ordered. Against the said decision, the employees' federation preferred letters patent appeal before the division bench of the high court and the division
Bench by its impugned judgment reversed the decision of the learned single judge by accepting the contention of the employees and negativing that of the bank. The division bench, in substance, held that the approval of the central government as a condition precedent to their implementation was not incorporated in the settlements nor was such approval necessary. Hence, there was no valid industrial dispute for which the conciliation proceedings could be held. Since the conciliation proceedings were invalid, the provisions of section 22(1)(*d*) did not apply. The strike was, therefore, not illegal. The court also held that the strike was, in the circumstances, justified since it was the bank management's unjustified attitude in not implementing the settlements, which was responsible for the strike. The bench then relied upon two decisions of this court in ***churakulam tea estate*** and ***crompton greaves*** cases and held that since the strike was legal and justified, no deduction of wages for the strike day could be made from the salaries of the employees. The bench thus allowed the appeal and quashed the circular of the 12-10-1989.
11. Since the matter has been referred to the larger bench on account of the seeming difference of opinion expressed in ***t.s. Kelawala*** and the earlier decisions in ***churakulam tea estate*** and ***crompton greaves***, we will first discuss the facts and the view taken in the earlier two decisions.
12. In ***churakulam tea estate*** which is a decision of three learned judges, the facts were that the appellant-tea estate which was a member of the planter's association of kerala (south india), from time to time since 1946, used to enter into agreements with the representatives of the workmen, for payment of bonus. In respect of the years 1957, 1958 and 1959, there was a settlement dated 25-1-1960 between the managements of the various plantations and their workers relating to payment of bonus. The agreement provided that it would not apply to the appellant-tea estate since it had not earned any profit during the said years. On the ground that it was not a party to the agreement in question, the appellant declined to pay any bonus for the said three years. The workmen started agitation claiming bonus. The conciliation proceedings in that regard failed. All 27 workers in the appellant's factory struck work on the afternoon of 30-11-1961. The management declined to pay wages for the day of the strike to the said factory workers. The management also laid off without compensation all the workers of the estate from 1-12-1961 to 8-12-1961. By its order dated 24-5-1962, the state government referred to the industrial tribunal three questions for adjudication one of which was whether the factory workmen were entitled to wages for the day of the strike.
13. The tribunal took the view that the strike was both legal and justified and hence directed the appellant to pay wages. This court noted that at the relevant time, conciliation proceedings relating to the claim for bonus had failed and the question of referring the dispute for adjudication to the tribunal was under consideration of the government. The labour minister had called for a conference of the representatives of the management and workmen and the conference had been fixed on 23-11-1961.

The representatives of the workmen attended the conference, while the management boycotted the same. It was the case of the workmen that it was to protest against the recalcitrant attitude of the management in not attending the conference that the workers had gone on strike from 1 p.m. On the day in question. On behalf of the management, the provisions of section 23(*a*) of the act were pressed into service to contend that the strike resorted to by the factory workers was illegal.

The said provisions read as follows:

23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lockout - (*a*) during the pendency of conciliation proceedings before a board and seven days after the conclusion of such proceedings;

This court noted that there were no conciliation proceedings pending on 30-11-1961 when the factory workers resorted to strike and hence the strike was not hit by the aforesaid provision. The court further observed that if the strike was hit by section 23(*a*), it would be illegal under section 24(1)(*i*) of the act. Since, however, it was not so hit, it followed that the strike in this case could not be considered to be illegal. We may quote the exact observations

Of the court which are as follows:

Admittedly there were no conciliation proceedings pending before such a board on 30-11-1961, the day on which the factory workers went on strike and hence the strike does not come under section 23(*a*). No doubt if the strike, in this case, is hit by section 23(*a*), it will be illegal under section 24(1)(*i*) of the act; but we have already held that it does not come under section 23(*a*) of the act. It follows that the strike, in this case, cannot be considered to be illegal.

Alternatively, it was contended on behalf of the management that in any event, the strike in question was thoroughly unjustified. It was the management's case that it had participated in the conciliation proceedings and when those proceedings failed, the question of referring the dispute was pending before the government. The workmen could have made a request to the government to refer the dispute for adjudication and, therefore, the strike could not be

Justified. Support for this was also sought by the management from the observations made by this court in ***chandramalai estate, ernakulam*** **verses** ***workmen***. In that case, this court had deprecated the conduct of workmen going on strike without waiting for a reasonable time to know the result of the report of the conciliation officer. This court held that the said decision did not support the management since the strike was not directly in connection with the demand for bonus but was as a protest against the unreasonable attitude of the management in boycotting the conference held on 23-11-1961 by the labour minister of the state. Hence, this court held that the strike was not unjustified. In view of the fact that there was no breach of section 23(*a*) and in view also of the fact that in the aforesaid circumstances, the strike was not unjustified, the court held that the factory workers were entitled for wages for that day and the tribunal's award in that behalf was justified.

14. In ***crompton greaves ltd.*** The facts were that on 27-12-1967, the appellant- management intimated the workers' union its decision to reduce the strength of the workmen in its branch at calcutta on the ground of severe recession in business. Apprehending mass retrenchment of the workmen, the union sought the intervention of the minister in charge of labour and the labour commissioner, in the matter. Thereupon, the assistant labour commissioner arranged a joint conference of the representatives of the union and of the company in his office, with a view to explore the avenues for an amicable settlement. Two conferences were accordingly held on 5-1-1968 and 9-1-1968 in which both the parties participated. As a result of these conferences, the company agreed to hold talks with the representatives of the union at its calcutta office on the morning of 10-1-1968. The talk did take place but no agreement could be arrived at. The assistant labour commissioner continued to use his good offices to bring about an amicable settlement through another joint conference which was scheduled for 12-1-1968. On the afternoon of 10-1-1968, the company without informing the labour commissioner

that it was proceeding to implement its proposed scheme of retrenchment, put up a notice of retrenching 93 of the workmen in its calcutta office. Treating this step as a serious one demanding urgent attention and immediate action, the workmen resorted to strike w.e.f. 11-1-1968 after giving notice to the appellant and the labour directorate and continued the same up to 26-6-1968. In the meantime, the industrial dispute in relation to the retrenchment of the workmen was referred by the state government to the industrial tribunal on 1-3-1968. By a subsequent order dated 13-12-1968, the state government also referred the issue of the workmen's entitlement to wages for the strike period, for adjudication to the industrial tribunal. The industrial tribunal accepted the workmen's demand for wages for the period from 11-1-1968 to the end of february 1968 but rejected their demand for the remaining period of the strike observing that "the redress for retrenchment having been sought by the union itself through the tribunal, there remained no justification for the workmen to continue the strike".

15. In the appeal filed by the management against the award of the tribunal in this court, the only question that fell for determination was whether the award of the tribunal granting the striking workmen wages for the period from 11-1-1968 to 29-2-1968 was valid. In paragraph 4 of the judgment, this court observed as follows: 4. It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period. After observing thus, the court formulated the following two questions, viz., (1) whether the strike in question was illegal or unjustified? And (2) whether the workmen resorted to force or violence during the said period, that is, 11-1-1968 to 29-2-1968. While answering the first question, the court pointed out that no specific provision of law has been brought to its notice which rendered the strike illegal during the period under consideration. The strike could also not be said to be unjustified as before the conclusion of the talks for conciliation which were going on through the instrumentality of the assistant labour commissioner, the company had retrenched as many as 93 of its workmen without even intimating the labour commissioner that it was carrying out its proposed plan of effecting retrenchment of the workmen. Hence, the court answered the first question in the negative. In other words, the court held that the strike was neither illegal nor unjustified. On the second question also, the court held that there was no cogent and disinterested evidence to substantiate the charge that the striking workmen had resorted to force or violence. That was also the finding of the tribunal and hence the court held that the wages for the strike period could not be denied to the workmen on that ground as well.

16. It will thus be apparent from this decision that on the facts, it was established that there was neither a violation of a provision of any statute to render the strike illegal nor in the circumstances it could be held that the strike was unjustified. On the other hand, it was the management, by taking a precipitatory action while the conciliation proceedings were still pending, which had given a cause to the workmen to go on strike.

18. In ***kairbetta estate, kotagiri*** **verses.** ***Rajamanickam***, this court observed as follows:

Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lockout is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands. In the struggle between capital and labour, the weapon of strike is available to labour and is often used by it, so is the weapon of lockout available to the employer and can be used by him. The use of both the weapons by the respective parties must, however, be subject to the relevant provisions of the act. Chapter v which deals with strikes and lockouts clearly brings out the

antithesis between the two weapons and the limitations subject to which both of them must be exercised.

19. In ***chandramalai estate*** the facts were that on 9-8-1955, the workers' union submitted to the management a charter of fifteen demands. Though the management agreed to fulfil some of the demands, the principal demands remained unsatisfied. On 29-8-1955, the labour officer, trichur, who had in the meantime been apprised of the situation both by the management and the workers' union, advised mutual negotiations between the representatives of the management and the workers. Ultimately, the matter was recommended by the labour officer to the conciliation officer, trichur for conciliation. The conciliation officer's efforts proved in vain. The last meeting for conciliation was held on 30-11-1955. On the following day, the union gave a strike notice and the workmen went on strike w.e.f. 9-12-1955. The strike ended on 5-1-1956. Prior to this, on 5-1-1956, the government had referred the dispute with regard to five of the demands for adjudication to the industrial tribunal, trivandrum. Thereafter, by its order dated 11-6-1956, the dispute was withdrawn from the trivandrum tribunal and referred to the industrial tribunal, ernakulam. By its award dated 19-10-1957, the tribunal granted all the demands of the workmen. The appeal before this court was filed by the management on three of the demands. One of the issues was: "are the workers entitled to get wages for the period of the strike?". On this issue, before the tribunal, the workmen had pleaded that the strike was justified while the management contended that strike was both illegal and unjustified. The tribunal had recorded a finding that both the parties were to blame for the strike and ordered the management to pay the workers 50% of their total emoluments for the strike period.

20. This court while dealing with the said question held that it was clear that on 30-11-1955, the union knew that the conciliation attempts had failed and the next step would be the report by the conciliation officer to the government. It would, therefore, have been proper and reasonable for the workers' union to address the government and request that a reference be made to the industrial tribunal. The union did not choose to wait and after giving notice

To the management on 1-12-1955 that it had decided to strike work from 9-12-1955, actually started the strike from that date. The court also held that there was nothing in the nature of the demands made by the union to justify the hasty action. The court then observed as under: the main demands of the union were about the cumbly allowance and the price of rice. As regards the cumbly allowance they had said nothing since 1949 when it was first stopped till the union raised it on 9-8-1955. The grievance for collection of excess price of rice was more recent but even so it was not of such an urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through industrial tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the government to make a reference. In such cases, strike even before such a request has been made may well be justified. The present is not however one of such cases. In our opinion the workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the government to make a reference.

They did not wait at all. The conciliation efforts failed on 30-11-1955, and on the very next day the union made its decision on strike and sent the notice of the intended strike from the 9-12-1955, and on the 9-12-1955, the workmen actually struck work. The government appear to have acted quickly and referred

the dispute on 3-1-1956. It was after this that the strike was called off. We are unable to see how the strike in such circumstances could be held to be justified.

21. In ***india general navigation and railway co. Ltd.*** **Verses** ***workmen*** ,this court while dealing with the issues raised there, observed as follows:

In the first place, it is a little difficult to understand how a strike in respect of a public utility service, which is clearly, illegal, could at the same time be characterized as 'perfectly justified'. These two conclusions cannot in law coexist. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the act, and is wholly misconceived, specially in the case of employees in a public utility service. Every one participating in an illegal strike, is liable to be dealt with departmentally, of course, subject to the action of the department being questioned before an industrial tribunal, but it is not permissible to characterise an illegal strike as justifiable. The only question of practical importance which may arise in the case of

An illegal strike, would be the kind or quantum of punishment, and that, of course, has to be modulated in accordance with the facts and circumstances of each case. Therefore, the tendency to condone what has been declared to be illegal by statute, must be deprecated, and it must be clearly understood by those who take part in an

Illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence.

22. We may now refer to the decision of this court in the ***t.s. Kelawala*** case where allegedly a different view has been taken from the one taken in the aforesaid earlier decisions and in particular in ***churakulam tea estate*** and ***crompton greaves*** cases.

23. The facts in the case were that some demands for wage revision made by the employees of all the banks were pending at the relevant time and in support of the said demands, the all india bank employees association, gave a call for a countrywide strike. The appellant-bank issued a circular on 23-9-1977 to all its branch managers and agents to deduct wages of the employees who participate in the strike for the days they go on strike.

The employees' union gave a call for a four-hour strike on 29-12-1977. Hence, the bank on 27-12-1977 issued a circular warning the employees that they would be committing a breach of their contract of service if they participated in the strike and that they would not be entitled to draw the salary for the full day if they do so and consequently they need not report for work for the rest of the working hours of that day. Notwithstanding it, the employees went on four-hour strike from the beginning of the working hours on 29-12-1977. There was no dispute that banking hours for the public covered the said four hours. The employees, however, resumed work on that day after the strike hours and the bank did not prevent them from doing so. On 16-1-1978, the bank issued a circular directing its managers and agents to deduct the full day's salary of those of the employees who had participated in the strike. The employees' union filed a writ petition in the high court for quashing the circular. The petition was allowed. The bank's letters patent appeal in the high court also came to be dismissed. The bank preferred an appeal against the said decision of the high court. On these facts, the only questions relevant for our present purpose which were raised in the case before the high court as well as in this court were whether the bank was entitled to deduct wages of workmen for the period of strike and further whether the bank was entitled to deduct wages for the whole day or *pro rata* only for the hours for which the employees had struck work. The incidental questions were whether the contract of employment was divisible and whether when the service rules and the regulations did not provide for deduction of wages, the bank could do so by an administrative circular. We are not concerned with the

incidental questions in this case. What is necessary to remember is the question whether the strike was legal or illegal and whether it was justified or unjustified was not raised either before the high court or in this court. The only question debated was whether, even assuming that the strike was legal, the bank was entitled to deduct wages as it purported to do under the circular in question. It is while answering this question that this court held that the legality or illegality of the strike had nothing to do with the liability for the deduction of the wages. Even if the strike is legal, it does not save the workers from losing the salary for the period of the strike. It only saves them from disciplinary action, since the act impliedly recognizes the right to strike as a legitimate weapon in the hands of the workmen. However, this weapon is circumscribed by the provisions of the act and the striking of work in contravention of the said provisions makes it illegal. The illegal strike is a misconduct which invites disciplinary action while the legal strike does not do so. However, both legal as well as illegal strike invite deduction of wages on the principle that whoever voluntarily refrains from doing work when it is offered to him, is not entitled for payment for work he has not done. In other words, the court upheld the dictum "no work no pay". Since it was not the case of the employees that the strike was justified, neither arguments were advanced on that basis nor were the aforesaid earlier decisions cited before the court.

24. 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.

25. 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.

26. In the present case the high court, relying on ***churakulam tea estate*** and ***crompton greaves*** cases has held that the strike was both legal and justified. It was legal according to the high court because the reference to the conciliation proceedings was itself illegal and, therefore, in the eye of the law, no conciliation proceedings were pending when the employees struck work. The strike was, further justified according to the high court because

The bank had taken a recalcitrant attitude and had insisted upon obtaining the approval of the central government for the implementation of the agreements in question, when no such approval was either stipulated in the agreements or required by law. We are afraid that the high court has exceeded its jurisdiction in recording the said findings. It is the industrial adjudicator who had the primary jurisdiction to give its findings on both the said issues.

Whether the strike was legal or illegal and justified or unjustified, were issues which fell for decision within the exclusive domain of the industrial adjudicator under the act and it was not primarily for the high court to give its findings on the said issues. The said issues had to be decided by taking the necessary evidence on the subject. We find nothing in the decision of the high court to enlighten us as to whether notwithstanding the fact that the agreements in question had not stipulated that their implementation was dependent upon the approval of the central government; in fact, the bank was not duty-bound in law to take such approval. If it was obligatory for the bank to do so, then it mattered very little whether the agreements in question incorporated such a stipulation or not. If the approval was

necessary, then there did exist a valid industrial dispute between the parties and the conciliation proceedings could not be said to be illegal. It must be noted in this connection that the said agreements provided for

Benefits over and above the benefits which were available to the employees of the other banks. Admittedly, the employees struck work when the conciliation proceedings were still pending. Further, the question whether the implementation of the said agreements was of such an urgent nature as could not have waited the outcome of the conciliation proceedings and if necessary, of the adjudication proceedings under the act, was also a matter which had to be decided by the industrial adjudicator to determine the justifiability or unjustifiability of the strike.

27. It has to be remembered in this connection that a strike may be illegal if it contravenes the provisions of sections 22, 23 or 24 of the act or of any other law or of 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 which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving machinery provided by the act or the contract of employment or the service rules and regulations etc. An enquiry into these issues is essentially an enquiry into the facts which in some cases may require taking of oral and documentary evidence. Hence such an enquiry has to be conducted by the machinery which is primarily invested with the jurisdiction and duty to investigate and resolve the dispute. The machinery has to come to its findings on the said issue by examining all the pros and cons of the dispute as any other dispute between the employer and the employee.

28. Shri garg appearing for the employees did not dispute the proposition of law that notwithstanding the fact that the strike is legal, unless it is justified, the employees cannot claim wages for the strike period. However, he contended that on the facts of the present case, the strike was both legal and justified. We do not propose to decide the said issues since the proper forum for the decision on the said issues in the present case is the adjudicator under the act.

29. The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is abuse by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, “irritation strike” or staying at work but deliberately doing everything wrong, “running-sore strike”, i.e., disobeying the lawful orders, sit-down, stay-in and lie-down strike etc. Etc. The cessation or stoppage of works whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lockout and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lockout as a direct action is prima facie unjustified. This is, particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal.

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, to compel the other party to the dispute to see the justness of the demand. It is not to be utilised 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.

31. With the emergence of the organised labour, particularly in public undertakings and public utility services, the old balance of economic power between the management and the workmen has undergone a qualitative change in such undertakings. Today, the organized labour in these institutions has acquired even the power of holding the society at large to ransom, by withholding labour and thereby compelling the managements to give in on their demands whether reasonable or unreasonable. What is forgotten many times, is that as against the employment and the service conditions available to the organised labour in these undertakings, there are millions who are either unemployed, underemployed or employed on less than statutorily minimum remuneration. The employment that workmen get and the profits that the employers earn are both generated by the utilisation of the resources of the society in one form or the other whether it is land, water, electricity or money which flows either as share capital, loans from financial institutions or subsidies and exemptions from the governments. The resources are to be used for the well-being of all by generating more employment and production and ensuring equitable distribution. They are not meant to be used for providing employment, better service conditions and profits only for some. In this task, both the capital and the labour are to act as the trustees of the said resources on behalf of the society and use them as such. They are not to be wasted or frittered away by strikes and lockouts. Every dispute between the employer and the employee has, therefore, to take into consideration the third dimension, viz., the interests of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer or the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect. This is true of the action in both public and private sector. But more imperatively so in the public sector. The management in the public sector is not the capitalist and the labour an exploited lot. Both are paid employees and owe their existence to the direct investment of public funds. Both are expected to represent public interests directly and have to promote them.

32. We are, therefore, more than satisfied that the high court in the present case had erred in recording its findings on both the counts viz., the legality and justifiability, by assuming jurisdiction which was properly vested in the industrial adjudicator. The impugned order of the high court has, therefore, to be set aside.