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L.L.B Part- 3rd

Subject- Labour Law

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Topic- What do you understand by 'Lockout'? Discuss the law relating to lockout giving its definition.

Lock-out

Introduction

Lock-out is cessation of work by the Employer. Just as Employees have a right not to sell their Labour, the same way the Employer has a right not to buy it, as a measure of settling the industrial dispute. In the struggle between the capital and labour the weapon of strike is used by the Employees, the weapon of Lock-out is used by the Employers. The Lock-out is antithesis of strike. The strike and lock-out are regarded as powerful levers to bring about agreements between the Employer and Employees. Section 2(1) defines the term Lock-out. However, the present definition is only a mutilated one. The term was originally and correctly defined in the Trade Dispute Act, 1929. From the definition given in the Trade Dispute Act, the present Act has taken the present definition but has omitted the words "when such closing, suspension or refusal occurs in consequences of a dispute and is intended for the purpose of compelling those persons or of aid in another Employer in compelling persons employed by him to accept terms or condition of, or affecting employment".

Closing a Place of Employment or Suspension of Work

When the Employer closes temporarily his place of Employment in order to force his employees to accept a compromise favourable to him on an industrial dispute raised by his employees, it is a 'Lock-out'. The Lock-out can thus be described as temporary - withholding of work by employer, undoubtedly to gain certain concessions from his unwilling - employees. It is usually a counter blast by Employer to a strike by employees and so the antithesis to strike. Refusal to employ or continue to Employ any number of persons employed by him : The phrase "Refusal by an Employer to continue to employ" - corresponds to the phrase "Cessation of work" or "Refusal to continue to work or employment" occurring in the definition of strike.

Lock-out, When Legal

The Act treats strikes and lock-out on the same basis; it treats one as the counter part of the other. The circumstances under which the legislature has banned strike, it has also at the Same time banned the lock-out. Thus what holds good-bad; legal-illegal, justified unjustified for strikes, holds the same for the lock-out. As such, the provisions of the Act which prohibit the strike also prohibits the lock-out. The object and reasons for which the Lock-out are banned or prohibited are the same for which strikes are banned or prohibited. It is because the Employer and the Employees are not discriminated in their respective rights in the field of industrial relationship between the two. As such, lock-out if not in conflict with Section 22 and 23 may be said to be legal or not legal. Sections 24(1) (iii), 10(3) and 10A (4A) similarly controls the lock-out. A lock-out in consequence of illegal strike is not deemed to be illegal. But if lock-out is illegal, Section 26(2), 27 and 28 will come in operation to deal with the situation. The Act does not lay down any guidelines to settle the claims arising out of illegal lock-out. The courts, therefore, have adopted the technique of apportioning the blame between the Employer and employees. This once again brings to the fore the concept of justifiability of lock-out.

Police Assistance

If the Employer declares a lock-out the employees are likely to react violently, it was held that the interest of a few workers cannot be permitted to harm the national interest. If the management wanted to remove machinery for export or for expansion purpose, he cannot be prevented from doing so. It cannot be permitted to say that the workman's right to strike will be put to harm, if it harms the larger national interest. In fact, it becomes duty of the Court to interfere and prevent the workmen from obstructing the smooth out-flow of final product and the police may be directed to assist the Employer in distress. However, if that be not so and removal of goods or plant or machinery involves only the financial interests of management and does not affect anybody else the court may not interfere and may not help the management by directing the police to render its assistance.

Penalties for Lock-out

Section 26 prescribes - penalty for, both, strike as well as lockout. However, before any - punishment is imposed under this Act or rather under this Section, it must be proved beyond all reasonable doubt that:

1. A workman has in fact commenced or continued or has otherwise acted in furtherance of a lock-out an Employer has commenced or continued or has acted in furtherance of- a lock-out; and 2. lock-out is illegal. The illegality must be proved strictly with reference to the provisions of the Act and the mens-rea on the part of a workman or an employer is wholly irrelevant and immaterial. These two ingredients must co-exist and only if these two ingredients are present then Workman shall be punishable with imprisonment for a term upto one month or with fine or with both. a. Employer shall be punishable with imprisonment for a term which may extend to Rupees one month or with fine.

Cognizance of Offence

The cognizance of the offence of committing illegality falling under the mischief of Section 26 of the Act can be taken only on a complaint made by or under the Authority of the appropriate Government under Section 34. It thus clearly indicates that party itself or the adjudicatory authority by itself cannot take cognizance and punish the guilty. Further, Section 34 also provides that no court inferior to that of the Magistrate of First Class or the Metropolitan Magistrate can take cognizance of the offence under the Act. Section 27 then provides that any person who instigates or incites others to go on strike or declare lock-out will also be punishable with imprisonment for a term which may extend to 6 months or a fine of Rupees one thousand or with both. Whereas Section 25 lays down that no person shall knowingly expend or apply money in direct furtherance or support of any strike or lock-out which is illegal. The use of the word “knowingly” demonstrates that mens-rea is an essential ingredient before any person is convicted under Section 25. The offender under this Section is punishable under Section 28 of the Act. Section 28 lays down that the offender shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to one thousand rupees or with both. Indeed the four ingredients must be proved (1) illegality within the meaning of this Act (2) there must exist mens-rea (3) these must be actual spending of money or supply money and (4) the use of money must be in direct furtherance or support of illegal lock-out.

The End