1995 (2) G. L. H. 680
R. K. ABICHANDANI, J.

Glaxo Laboratories Employees Union ...Petitioner
Versus
M/s Glaxo India Ltd. ...Respondent

Special Civil Application No. 1987 of 1995*

D/- 27-4-1995 *[@page680]*

*Special Civil Application challenging award of the Industrial Tribunal, Baroda and seeking declaration that undertaking sought from workman was illegal and in unjust manner and hence company is liable to pay wages.

Industrial Disputes Act, 1947 - S. 9A -Conditions of service - Company can seek assurance in the form of an undertaking to enforce discipline, to avoid untoward incidents within factory premises - Having to take permission to enter factory premises does not change condition of service of a workman - On facts, undertaking to do normal work with discipline necessary in the prevalent situation found lawful and not amounting to change of service condition.

On scrutinizing of this undertaking, it is clear that there is no change of any condition of service of the workman. The undertaking is more in form of an assurance to do the normal work with discipline which was necessary having regard to the prevalent situation and the acts of the workman, so that once they start work during the shift, they may not abandon the same in the midst and maintain discipline. As regards permission to enter the factory premises on a declaration that the concerned employee was not on strike, that too cannot be said to be any change in condition of service. It is not a condition of service of a workman to force his entry in the factory premises, when on strike. The workmen enter the premises because of the implied licence and such permission of the employer to enter the factory premises cannot be described as change in conditions of service within the meaning of S. 9A of the said Act. Under the circumstances, the Tribunal was fully justified in holding that the undertaking asked for by the Company cannot be described as change in any service condition in violation of S. 9A of the said Act. (Para 8)

The Tribunal has, after considering the relevant facts and circumstances of the case, come to the conclusion that the workmen were trying to take undue advantage of their own wrong and flash strikes which were resorted to before 8-1-1991 were neither legal nor justified and therefore, the company was justified in requiring the workmen to execute the undertakings. It has come on record that in the factory of the Company, the processes which were undertaken for the manufacture of drugs required continuous running and constant attention and any laxity on that count could result in fire, explosion, major damage to plant and equipment and other hazards. The Tribunal therefore, rightly found that with a view to enforce discipline and to avoid untoward incidents within the premises, the Company was justified in seeking such assurance from the employees who wanted to enter the premises for work. As noted above, the undertaking does not change any service condition of the employee and it only seeks an assurance from the employees that they will discharge their duties during a shift period in normal way with discipline and will not abandon the work during the shift. Under these circumstances, the petitioners have failed to make out any case for exercise of the jurisdiction of this Court under Art. 227 of the Constitution of India, against the impugned award. (Para 9)

Cases Referred:

1. Canara Bank & Ors. v. R. Jambunathan & Ors. (1994) 5 SCC 573 (Para 9)
2. Bank of India v. I. S. Kelawala, 1990 (4) SCC 744 (Para 9)
3. Vaman Maruty Gharat & Ors. v. M. P. Apte & Ors. 1989 (1) LLJ 134 (Bom) (Para 10)
4. Swastik Textile Engineers Pvt. Ltd. v. Rajensingh Santsingh & Ors., XXV (1) G.L.R. 470 (Para 10)

Appearances:

Mr. N. R. Sahani, Advocate for the petitioner
Mr. M. B. Buch, Advocate for Mr. K. S. *[@page681]* Nanavati, Advocate for the respondent

R. K. ABICHANDANI, J.:-

1.

The petitioner Union challenges the award dated 1st August 1994 made by the Industrial Tribunal, Baroda in Reference (IT) No. 103/1993 and seeks a declaration that the respondent had sought the undertaking from the workmen illegally and in unjust manner and that it was liable to pay wages from 9th December 1991 to 23rd April 1992, with interest being the period during which the workmen could not attend to work due to insistence for executing an unjust undertaking.

2. The respondent-Company deals in manufacture and distribution of drugs, Pharmaceuticals and food items, having its factories at Worli, Thane, Ankleshwar, Nasik and Aligarh. The factory at Ankleshwar was established in 1985 to manufacture Ibuprofen and Sotalol Hydroxide initially and later new produces were introduced. On 30th July 1987, a settlement was arrived at between the parties which ended on 30th June 1990 when new demands were raised by the Union including demand for 2 days' weekly off, known as 6 x 2 shift system or rota system. There were negotiations between the parties on this issue, but it could not be resolved. In the meeting of the General Body of the Union held on 27th September 1991, it was resolved to resort to agitation including indefinite strike to press for their demand for 6x2 shift system. This stand was reiterated by the Union in their letter dated 15th October 1991. On 8th November 1991 the respondent-Company wrote a letter to the Union drawing its attention to the deterioration in the discipline of the workmen and pointing out that their insistence on flash strikes will adversely affect the operations of the Company, which was running a continuous process factory. According to the Company, the irresponsible conduct of the workmen created safely hazards to the plant and personnel. The Union, however, by its letter dated 11th November 1991 reiterated its demand for 6x2 shift system. According to the Company, from 8th October 1991 to 7th December 1991, there were 14 instances of flash strike, go-slow, slogan shouting, etc. on different dates. The Company approached the Civil Court to obtain orders against the workmen for restraining them from using force executing threats and using abusive language. Ultimately, on 8th December 1991 the respondent-Company sought an undertaking from each workman at the beginning of each shift to the effect that during the shift, the workmen would not go on strike and will ensure normal output by performing the assigned duties and will maintain discipline. The workmen refused to sign the said undertaking and therefore, Company put up staff notices informing the workmen that such concerted refusal on their part to report for duty would amount to illegal and unjustified strike and that the wages would not be payable for the period of such absence. On 11-1-1992, the Union wrote a letter to the Company seeking withdrawal of the requirement of undertaking. Thereafter, meetings were held before the Conciliation Officer to bring about a settlement and ultimately, on 7th April 1991, the Union agreed to drop its demand for 6x2 shift system and consider the Company's offer for subsidised transport. The demand for 6x2 system was dropped by the Union on 23rd April 1992. Union also agreed to withdraw the agitation and gave an undertaking on behalf of the workmen that they would resume work and will not resort to strike and further that they will ensure normal output and maintain discipline. Thus, with effect from 24th April 1992, the work was resumed. According to the Company, the workmen were on illegal and unjustified strike from 9th December 1991 to 23rd December 1992, while according to the *[@page682]* Union, this was an illegal lock-out by the Company, inasmuch as the Company was insisting on an undertaking from each workman which it could not have done. The dispute regarding payment of wages during the said period ultimately came to be referred to the Tribunal on 31st June 1993 in the following terms:

"Whether the Company should be obliged to pay wages for each month and other benefits together with interest at the rate of 18 % to the workmen until the Company withdraws the bonds demanded by them by their notice dated 8-12-1991?"

3. The Tribunal examined the question as to whether during the said period the workmen had gone on illegal and unjustified strike or whether the Company had declared an illegal and unjustified lock-out. The Tribunal holding that the workmen had resorted to unjustified strike and that under the circumstances the Company was justified in asking them to execute the undertaking which according to the Tribunal did not amount to any change in service conditions, dismissed the Reference.

4. It was strongly contended by the learned Counsel appearing for the petitioner that instead of examining the legality and propriety of the claim of the workmen for wages for the period in question for which the Company was demanding the undertaking, the Tribunal had traveled beyond the terms of the reference, by holding that there were flash strikes and therefore, the undertaking was justified. It was contended that the Tribunal ought to have apportioned the blame for demand for undertaking and for its continued insistence for a period of four months. It was also contended that the workmen were not on strike and the insistence of undertaking by the Company in fact amounted to illegal lock-out. It was submitted that such insistence on the part of the Company also amounted to change in the conditions of service applicable to these workmen in respect of items 8 and 9 of the Fourth Schedule to the Act. Item 8 relates to withdrawal of any customary concession or privilege or change in usage, while item 9 relates to introduction of new rules of discipline, or alteration of existing rules except insofar as they are provided in standing orders. It was also contended that such insistence for an undertaking amounted to unfair labour practice under the provisions of Section 25T of the said Act, read with item 8 of the Fifth Schedule which refers to insistence upon individual workmen, who are on a legal strike to sign a good conduct bond, as a pre-condition to allowing them to resume work, as one of the unfair labour practices.

5. The learned Counsel appearing for the respondent-Company submitted that the undertaking which was insisted upon by the Company did not incorporate any new condition of service and if was only intended to be an assurance by the workmen not to create chaos while at work, and as there was no change in any condition of service, the notice of change contemplated by Section 9A was not required to be given.

6. The entire controversy thus centres around the question as to whether the insistence of the Company on the workmen to sign an undertaking was justified or not. If the insistence was not justified, then the workmen were entitled to refuse to sign the undertaking and they could not be penalised by withholding their wages for the period during which the undertaking was insisted upon. On the other hand if the undertaking was justified under the circumstances and if it did not amount to any change in conditions of service, then the workmen could not claim wages for the period that they abstained from work. *[@page683]*

7. The staff notice dated 8th December 1991, which is at Annexure "B" to the petition, records the fact that from 2nd November 1991 onwards the workmen of this Company were going on flash strikes, which according to the Company were illegal and unjustified and they were resorted to at the instigation of some irresponsible elements. It was recorded in the staff notice that the factory of the Company was undertaking processes of continuous nature, which required constant attention and control and that any lack of attention or negligence could lead to fire or explosion with possibility of injuries to the employees and major damage to the plant and equipment. It was further recorded that due to illegal flash strikes, workmen were leaving the processes unattended, despite repeated advice to the contrary, and ignoring the work procedure, as a result of which the operation of the factory has becoming a potential hazard. It was felt that such indiscipline of the workmen could pose a threat to the factory operations. Feeling that maintenance of discipline was absolutely essential under the circumstances, the Company declared that it was decided to obtain an undertaking from each workman at the beginning of each shift and the format of that undertaking was given at the bottom of the said notice, which reads as under:

"UNDERTAKING

I , Employee No. hereby seek permission to enter the factory premises as I am not on strike and I undertake that during my shift I will not go on strike, I will ensure normal output by performing my assigned duties and I will maintain discipline. I accept that in case I fail to abide by my above undertaking, I will render myself liable to action being taken against me.

Signature."

8. The aforesaid undertaking seeks the employee concerned to declare that he is not on strike and therefore, he should be permitted to enter the factory premises. The employee is required to undertake that during his shift, he will not go on strike, that he will ensure normal output by performing his assigned duties and further that he will maintain discipline. In the last portion of the undertaking the employee agrees that in case he fails to abide by the undertaking, he will render himself liable to action being taken against him. On scrutinizing of this undertaking, it is clear that there is no change of any condition of service of the workmen. The undertaking is more in form of an assurance to do the normal work with discipline which was necessary having regard to the prevalent situation and the acts of the workmen, so that once they start work during the shift, they may not abandon the same in the midst and maintain discipline. As regards permission to enter the factory premises on a declaration that the concerned employee was not on strike, that too cannot be said to be any change in condition of service. It is not a condition of service of a workman to force his entry in the factory premises, when on strike. The workmen enter the premises because of the implied licence and such permission of the employer to enter the factory premises cannot be described as change in conditions of service within the meaning of Section 9A of the said Act. Under the circumstances, the Tribunal was fully justified in holding that the undertaking asked for by the Company cannot be described as change in any service condition in violation of Section 9A of the said Act.

9. It was contended that the period of settlement had ended on 30th June 1990 and the settlement was terminated by the notice dated May 21, 1990. Therefore, there was no illegal strike on the part of the workmen as envisaged by the *[@page684]* provision of Section 23(c) of the said Act. Under the said provision 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 lock-out during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award. It was submitted that as the strike was not illegal, it should be treated as legal and the workers should be entitled to their wages for the period in question. This proposition flies in face of the settled legal position as reflected in the decision of the Supreme Court in Canara Bank and Ors. v. R. Jambunathan and Ors., reported in (1994) 5 S.C.C. 573, in which endorsing the view taken in Bank of India v. T. S. Kelawala reported in 1990(4) S.C.C. 744 the Supreme Court in paragraph 25 of its judgment held that the workers were 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, is a question 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. The Tribunal has, after considering the relevant facts and circumstances of the case, come to the conclusion that the workmen were trying to take undue advantage of their own wrong and flash strikes which were resorted to before 8-1-1991 were neither legal nor justified and therefore, the Company has justified in requiring the workmen to execute the undertakings. It has come on record that in the factory of the Company, the processes which were undertaken for the manufacture of drugs required continuous running and constant attention and any laxity on that count could result in fire, explosion, major damage to plant and equipment and other hazards. The Tribunal, therefore, rightly found that with a view to enforce discipline and to avoid untoward incidents within the premises, the Company was justified in seeking such assurance from the employees who wanted to enter the premises for work. As noted above, the undertaking does not change any service condition of the employee and it only seeks an assurance from the employees that they will discharge their duties during a shift period in normal way with discipline and will not abandon the work during the shift. Under these circumstances, the petitioners have failed to make out any case for exercise of the jurisdiction of this Court under Article 227 of the Constitution of India, against the impugned award.

10. Reliance placed on the case of Vaman Maruty Gharat and Ors. v. M. P. Apte and Ors., reported in 1989 (1) L.L.J. 134 (Bom.) on behalf of the petitioner is wholly misconceived because in that case the undertakings insisted on the workers making confessions, namely that the strike was illegal and that after entering the factory they would not damage the property. The said decision was rendered in context of the nature of undertaking which was asked for from the workers in that case and it has no bearing on the present case. So also is on the same lines the decision of this Court in Swastik Textile Engineers Pvt. Ltd. v. Rajensingh Santsingh and Ors., reported in XXV (1) G.L.R. 470 in which by executing a writing the workers were required to admit that they had participated in the strike which was illegal. Besides giving assurance of not

participating in such illegal strikes in future and seeking pardon for having participated in the illegal strike, the workers were also required to state that it would be open to the employer to impose any penalty on them for participating in the illegal strike and that penalty would be binding on them and that they would not question the validity of *[@page685]* imposition of such penalty. It is clear that the nature of undertaking which was required to be executed by the workmen in Swastik Textile Engineers Pvt. Ltd. (supra) was entirely different and there is absolutely no comparison between that case and the present one. The said decision, therefore, cannot assist the petitioners.

11. Under the above circumstances, the petition deserves to be rejected. Notice discharged with no order as to costs.

(VSM) Petition rejected.