No Work No Pay

Though not originally laid down as a principle of labour law, it has assumed importance in modern times with highly industrialized world, having its own industrial disputes and problems for want of cordial, normal and peaceful relations between employers and their employees (i.e., workers). In this context definition of "wages" in Industrial Disputes Act, 1947, S.2(rr) has to be noted and examined in an attempt to find out just solution to this theme of `No work no pay i.e., wages'. The said definition reads as under:

`Wages' means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express of implied, were fulfilled be payable to a workman in respect of his employment, or of work done in such employment, and includes –

(i)such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any commission payable on promotion of sales or business or both; but does not include-

(a)any bonus;

(b) any contribution paid or payable to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service.

Looking to this definition, `wages' means in brief, all the remuneration i.e., money paid to the workman by the employer, for the work, he performs for the employer, for which he is engaged by his employer.

`No work no pay' is not a mere demagogic slogan. It is true that the principle `no work no pay' is not expressly declared to be a fundamental right or a fundamental duty, but it is certainly a constitutional goal. The Chapter VI of our Constitution, not only reflects the spirit of the French declaration, but is a corollary to the chapters on the Fundamental Rights and Directive Principles. Art 39 of our constitution proclaims the principle ` equal pay for equal work'. To majority of the people equality clauses of the Constitution, would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay. The principle `no work no pay' is another side of the same coin, in other words, a necessary logical corollary and extension of the principle `equal work for equal pay'. It does mean social justice in action, which is rather a sound measure of constitutional sensitivity of the State.

BASIS OF DOCTRINE - `NO WORK NO PAY'':

In *Dhirendra Chamoli* the Supreme Court observed "it is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendra, knowing fully well that they will be paid only daily wages and therefore they cannot claim more. This argument lies ill in the mouth of the Central Government, for it is an all too familiar argument with the exploiting class and to welfare State committed to a socialistic pattern of society cannot be permitted to advance such argument".

With this background the doctrine of `no work no pay' developed gradually. Obviously it is a **Judicial development.**

BASIC PRINCIPLES

In *Marry Kante Bose v. Bank of India*, 1977 II LLN 284 and *T.S. Kelawala v. Bank of India,* 1981 (43) FLR 431, it was observed that the employee did not earn his salary from hour to hour and therefore salary cannot be deducted for particular hours. Unless the employer is empowered or authorized by any Act or under the terms and conditions of employment to deduct any part of the salary from the salary payable to the employee, he has no power to make any deduction from the salary on a pro rata basis for the time, during which he was absent from his desk and participated in the demonstrations.

Again *Krishnatosh Dasgupta v. Union of India*, 1979 LIC 1154 and in *Apart (P) Ltd. v. Samant,* 1981 I LLN 95 (Bom.) it was held that the deduction of wages on allegation that the workers in general had resorted to go slow, is not permissible in law, for wages can be deducted only in terms of statutory provision or in terms of a settlement.

A day's wages were deducted from the salary of bank-employee for refusing to attend the clearing house at local State Bank of India, which was part of his routine work. No disciplinary action was taken against him. With these facts Madras High Court held that deduction of day's wages is illegal, as it is not a case of total abstaining from duty as the employee did report for duty and did perform part of his duties. Bank is at liberty to take disciplinary action against him for disobedience. – *K.R. Sengamalam v. Indian Bank*, 1988 I LLN 878 (Mad.H.C.).

Somewhat different line of thinking has come out in *Algemene Bank v. Central Government,* 1978 I LLN 101 and *Ramchandran v. Indian Bank*, 1979 I LLN 179, in these words "The principle to be followed is `no work no pay' and in order to earn his wages an employee will have to work. Absence from duty would undoubtedly mean that the employee had not worked during the period of absence and he is not entitled to wages for such period of absence.

This very principle was eloquently explained in *Vikram Thamskar v. Steel Authority of India,* 1982 II LLN 319 (M.P.) in these words:

Under the general law performance of service in accordance with the contract of employment is a condition precedent for earning the remuneration or salary. If the contract is indivisible providing for the payment on completion of a definite period of service or a definite piece of work, then no part of the remuneration can be recovered unless the service is completely performed. If the employee absents from work without just cause or excuse, he commits a breach of the terms of contract.

The legal position is that an employee forfeits remuneration not only when he absents from duty, but also when he wilfully does not discharge his duty. If the petitioners deliberately and in concerted move merely attended the site or place of work and did not work at all, they were not entitled to salaries for those periods as they were guilty of breach of contract.

Reiterating these very principles, Punjab and Haryana High Court in *Dharam Singh Rajput v. Bank of India,* further observed, "whenever an employee is posted, he has to perform his work in normal working hours. If an employee absents from duty for a part of the day, it can be legitimately and rightly held as absence for the whole day and the employer is entitled to deduct the wages for the whole day,…. And there was no question of giving any opportunity to the employees".

NO WORK NO PAY – WHEN NOT APPLICABLE?

No work no pay is a normal rule. But it is not applicable when an employee is given notional promotion from an earlier date, on his exoneration from departmental proceedings or criminal prosecution. – *Union of India v. K.U. Janakiraman*, 1991 II CLR 635 (S.C.)

After examining the legal position, the Supreme Court has held that principle of `no work no pay' is not applicable when the employee is ready and willing to work, but the employer prevents him from doing his duties (i.e. work). - *J.N. Shrivastava v. Union of India*, 1999 I LLJ 546 (S.C.)

When admittedly the workmen did not do the work allotted to them, the management cannot be compelled to pay them wages. No exception can therefore be taken to the finding of the Labour Court on the point. – *Fact Engineering Workers' Association v. Labour Court & Ors.* 1992 (64) FLR 383 (Ker.H.C.).

WHEN STAY GRANTED ON REINSTATEMENT WAGES HAS TO BE PAID:

Labour Court directed reinstatement of the workman concerned. Management filed appeal and obtained stay on the order of reinstatement. After the appeal of Management was dismissed, it was held that the concerned workman was kept out of employment for no fault of his. As such, he is entitled to wages for the said period. – *General Secretary, Best Workers' Union v. General Manager, Best Undertaking,* 1997 I CLR 898 (Bom.).

WAGES FOR EARNED LEAVE, ON REGISTRATION WITH IMMEDIATE EFFECT:

Labour Court granted the claim of workman for wages for earned leave in an application under Section 33-C(2) of I.D. Act. Bombay High Court held that reliance can be placed on S.79(3) of the Factories Act, 1948, which *inter alia* lays down that even when workman quits service on his own accord, he shall be paid leave wages he is entitled to. – *D.N. Bandopadhyaya v. Presiding Officer, Ist Labour Court,* 1997 II CLR 600 (Bom.H.C.)

WAGES FOR WEEKLY HOLIDAYS – BURDEN OF PROOF:

One workman had raised issue and had established that he had worked on weekly holidays, Burden shifted upon employer to show that workman was instructed not to work on weekly holidays. The employer having failed to discharge that burden, Labour Court rightly allowed the claim of workman. *Gujarat Housing Board v. Naval Kishore Revashankar Pandya*, 1997 I CLR 1045 (Guj.H.C.).

WHEN THE PRINCIPLE `NO WORK NO PAY' CANNOT BE INVOKED?

Due to non-availability of transport, as departmental buses were stopped by residents of nearby villages, members of petitioner-union did not report for duty on 14-8-1998. On management ordering non-payment of wages on the principle of `no work no wages', Madras High Court held that the management have not applied their mind, as to whether, really those workers had participated in the `Bandh' and they wilfully absented themselves from attending duty. The decision to deduct wages for the day cannot be sustained, as management failed to establish that there was refusal to work on the part of workmen. – *T.N. Atomic Power Employees' Union v. Nuclear Power Corporation*, 1999 I LLN 249 (Mad.H.C.).

WAGES FOR `OFF DUTY' PERIOD:

Respondent-workman a casual driver on daily wages, being involved in an accident during the course of his employment, was `put off duty', till he was removed from service. On the question as to whether, he is entitled to wages for off-duty period, the Court held that casual labourer can approach the Tribunal in respect of his grievance. So also he being a workman is entitled to wages for off duty period. – *Depot Manager, A.P.S.R.T.C. v. Labour Court, III, Hyderabad,* 2001 III LLN 895 (A.P.H.C.).

Appellant assails the order of the Tribunal, directing payment of 50% wages for the period respondent-workman was placed on "put off duty" in view of Rule 9(3) which was pressed into service. While dismissing the appeal filed by the Union of India, Supreme Court held that there is no infirmity with the impugned order in as much as Rule 9(3) is struck down as violative of Art. 14 of the Constitution in the matter of *Secretary, Department of Posts v. Chander Pal Singh,* 1999 (9) SCC 168. – *Union of India v. Shantilal S. Valand,* 2001 I LLJ 1421 (S.C.).

PRINCIPLE NOT APPLICABLE, WHEN EMPLOYER DID NOT PERMIT WORKMAN TO WORK:

If the respondents did no permit the workmen to work during relevant period, they cannot be permitted to take advantage of their own wrong by invoking the principle of `no work no pay'. Herein the Court relied on the judgment of Supreme Court in *Union of India v. K.U. Janakiraman,* 1999 II CLR 635, wherein the same principle was reiterated by Supreme Court. – *Dudh Kamgar Sabha v. Zurisingh Bichusingh & Co.* 2004 III CLR 106 (Bom.H.C.).

`NO WORK NO PAY' – PRINCIPLE, WHEN NOT APPLICABLE:

The said principle cannot be applied to a case in which employee is kept away from duty or rendered ineligible by act or omission of employer. In this petitioner, after his release from Army was appointed in Civil Secretariate, Haryana. Benefits of his military service, initially denied, was granted to him lateron. Promotion given to him was anti-dated. Denial of arrears of pay and allowances to him from deemed date of promotion, on the principle of `no work no pay' is held to be improper. – *State of Haryana v. Bani Singh Yadav*, 2005 LIC 1016 (P.&H.D.B.).

Examining the entire law then available, the Rajasthan High Court in *Prakash Chand Johari v. Indian Overseas Bank,* 1986 II LLN 222, approved the decision in *Dharam Singh Rajput's* case (supra) wherein it was observed:

> "An employee is supposed to carry out his duties during the working hours and in case he, for any reason refuses to work or absents himself during the working periods, without the permission of the authorities competent to permit, his leave of absence is liable for deduction of wages for the period he is absent. This is clear by the explanation attached to S.9 of the Payment of Wages Act. A perusal of this explanation makes the intention of the Legislature clear that even if the employee stays on his desk and refuses to work in pursuance of stay-in-strike or any other cause, which is not reasonable, he shall be deemed to be absent and make himself liable for deduction of wages.
>
> Where a wage period is monthly, a part of this period can be reasonably split up into a number of days during the month. But it will be unreasonable to further split up each day into hours and minutes and seconds. In the matter of interpretation of this provision, the interest of both the employees and the employers have to be reasonably and justly balanced".

In the instant case of *Johari* the pertinent question was whether deduction of five hours salary was legal or not. The Court answered in the affirmative without mention in whether the deduction was even valid for two day's salary.

This has been misunderstood, misinterpreted and not fully appreciated by a few i.e., labour side. However, there is no reason to doubt that the Court approved the principle that salary for the whole day could be deducted for absence for a part of the day.

SHOW CAUSE NOTICE, WHETHER NECESSARY:

On the contention that this could not be done without issuing notice to workers and providing an opportunity of being heard, it was observed that this contention is devoid of merit. If absence from duty for a part of the day could be legitimately and rightly held as absence for the whole day as held above, the respondent Banks were entitled to deduct the wages for the whole day u/s. 16 of the Act read with Ss.7(2)(b) and 9 of Payment of Wages Act and there was no question of giving an opportunity.

This important aspect of the matter also came up for consideration in U.P. Bank Employees Union v. The New Bank of India, 1986 LIC 754. Therein it is held that "an employee gets his salary for the days he attends to his work or is absent on authorized leave and not for other days on which he fails to work. Likewise a college student gets credit for attendance on the days he attends his lectures and not for the days of absence. We did not think principle of *audi alteram partem* can be stretched even to making an employee or a student absent although as an automatic consequence, the employee may loose his wages for the day or the student may ultimately find his attendance short of the requisite minimum to entitle him to appear at the final examination will be given to those disputing their absence".

CONSTITUTIONALITY OF RULES:

The principle `no work no pay' was successfully tested on the constitutional anvil in *U.P. Bank Employees' Union v. The New Bank of India,* 1986 LIC 754. While `identifying no work situation' the circular further mentioned that the absence may be for any period. It may be for as long as 6-12 hours or as short as 5 minutes. In any case, it is to be regarded as no work no pay' for that period. On behalf of the Bank, it was contended that both the clauses (a) and (b) above show that all forms of demonstration and agitation are directly banned.

On this point reliance was placed on:

(i) *O.K. Ghosh v. Joseph,* AIR 1963 SC 812,

(ii) *B. Manmohan v. State of Mysore*, AIR 1966 Mysore 261.

Therein it was held that if a conduct rule is framed banning any type of demonstration or agitation or criticism of the authorities, it would be violative of Art. 19(1)(a) of the Constitution. However, the outer limit to the right to demonstration was emphasized by Delhi High Court in *Engineering Projects (P) Ltd. v. Engineering Projects (P) Ltd. Employees Union*, 1986 LIC 1366, in these words:

> "Though the employees of the company have a right to hold demonstrations, give speeches and shout slogans to get their grievances redressed, they have no right to indulge in these activities in office premises of the Company". To this one may add `during the office hours', and if they do so, the employers will have a right to deduct wages on the basis of now well-established doctrine of `no work no pay'. - Long back in *Canara Bank v. Jambunathan & Ors.*

The Court ruled that the workers were not entitled to wages for the strike period. While commenting on this principle the Court observed: "Those who for right to work do not have right to strike work. Thus, strike and for that matter every strike and every lock-out causes loss of lakhs or crores of rupees to the nation. A prolonged strike is a suicidal act on the part of the workman".

WAGES FOR STRIKE PERIOD OR PERIOD OF LOCK-OUT:

Reading together the two definitions of `wages' and `strike' in Ss. 2(rr) and 2(9) of the Industrial Disputes Act, it is clear that wages are payable, only if the contract of employment is fulfilled and not otherwise. When the workers do not put in allotted work or refuse to do it, they would not be entitled to wages proportionately. Whether the strike is legal or otherwise, would not make any difference. When the workers resort to strike, they do so knowingly full well its consequences. When the workers withhold their labour, they cannot expect to be paid (their wages). – *Bank of India v. T.S. Kelawala*, 1990 I CLR 748 (S.C.).

The above principle was modified by the Supreme Court in *Syndicate Bank v. K. Umesh Naik,* 1994 II CLR 753, with these observations: In order that workmen are entitled to wages for the strike period, the strike must be both legal and justified. In other words if it is legal but unjustified or illegal but justified, the workmen are not entitled to wages for the strike period.

WAGES FOR LOCK-OUT PERIOD:

Respondent-Company declared lock-out from 4/5 June 1978, which continued upto 17/6/1978. Tribunal held that as the lock-out was declared as consequence of illegal strike by the workers, the lock-out cannot be declared illegal.

Applying the ratio of *Syndicate Bank v. K. Umesh Naik,* (supra) the Supreme Court held lock-out which is the consequence of illegal strike, cannot be held illegal. It is both legal and justified in the present case. As a result the workmen are not entitled to wages for the period during which lock out continued. – *HAL Employees Union v. Presiding Officer*, 1996 II CLR 11 (S.C.).

WAGES FOR STRIKE PERIOD – STRIKE LEGAL BUT NOT JUSTIFIED:

The demand for bonus as raised by workmen of the Wire Division, was not of such an urgent and serious nature as to justify the workmen to resort to strike. The matter was admitted to conciliation, from which the workmen, eventually withdrew. Even then it would not justify the workmen to go on strike. The strike being not justified, the workmen are not entitled to strike period wages – *Panyam Cements & Minerals Industries v. Deccan Wire Employees Association,* 1998 II CLR 923 (Karn.H.C.).

Petitioner Corporation declined to pay wages to its workers for the period they were on illegal strike from 14-1-1982 to 17-1-1982. Workers claimed it was illegal lock-out by Management. Bombay High Court held that workmen are not entitled to wages as they were on illegal strike. There was no lock-out by the employer. Applying the principle of `no work no wages' workmen are not entitled to any wages. – *Bharat Petroleum Corporation v. Workmen in Refinery Division,* 2000 III CLR 539 (Bom.H.C.).

WAGES FOR LOCK-OUT PERIOD – BLAME APPORTIONED AT 50%:

There was tools down strike by workmen after entering factory premises. The lock-out, thus, declared by management was prolonged. In the Reference, the Tribunal apportion the blame at 50% on either of the parties and directed management to pay to the workers 50% wages for the said period. The Calcutta High Court upheld the decision of the Tribunal and observed that the Government was justified in making Reference. Tool down strike comes within the definition of strike under S.2(g) of the Act. Lock-out by management was justified as management made no efforts to negotiate with workers. Tribunal was justified in apportioning of blame equally on both the parties. Conclusions drawn by Tribunal are neither irrational, nor perverse and no interference is warranted with such Award. – *Aluminium Industries Ltd. Hyderabad v. Industrial Tribunal & Ors*. 2005 III CLR 170 (Cal.H.C.).

WAGES FOR STRIKE PERIOD – MEANING OF DIES NON:

In a petition seeking directions for payment of wages for strike period to the petitioners, it was held by the Bombay High Court that `dies non' means `no activity' as per Oxford Dictionary. Use of words `dies non' in the settlement mean said period is to be treated `as without any business' by both the parties. Thus the petitioners are not entitled to wages for the said period. *All India Central Government Health Scheme Employees Association, Nagpur v. Union of India & Ors*. 2006 I CLR 174 (Bom.H.C.).

WAGES – ENTITLEMENT – WHILE ON BAIL?: Petitioner involved in criminal case was arrested, released on bail and was eventually acquitted of criminal charges. On his claim for wages for intervening period and particularly from the day he was on bail, Madhya Pradesh High Court held that the claim cannot be sustained as there is nothing on record to support his claim or that the respondent-Bank did not permit him to join duties. Nor it will help on the argument that on account of arrest he was unable to attend his duties. All this argument is without merit. – *Vishambar Singh Sikanwar v. UCO Bank, Calcutta,* 1997 LIC 89 (M.P.H.C.).

REFUSAL TO DO CERTAIN WORK:

Petitioner-clerks operating Advance Ledger Posting Machines, refused to do allotted clerical work on certain days, on the ground that they were busy on ALP Machine and it would not be possible for them to do additional work. In the challenge to the impugned order of deduction of proportionate wages, Madras High Court held that contract of employment involves reciprocal promises and the employee's right to remuneration depends, entirely upon performance of the work for a specified period and therefore his remuneration was payable only if principle terms of employment are effectively fulfilled. The petitioners failed

to attend the above work, despite specific orders and thus they failed to earn their wages for the relevant dates. No interference is called for, with impugned order.

– *G. Ganpathi Subramanium v. Deputy G.M., Canara Bank,* 2000 II CLR 190 (Mad.H.C.).

NO WORK NO PAY – NOTIONAL PROMOTION:

On the representation made by the petitioner, he was granted notional promotion, but not back wages. While rejecting his claim for back wages, the Delhi High Court held that notional promotion was given to the petitioner in terms of the Clause 18.4.3 of the Circular of the Department of Personnel and Training. No arrears are admissible. No fault can be found with the impugned order of the respondents for not making payment of arrears, on the basis of the principle `no work no pay'.

– *Amar Singh v. Union of India*, 2002 II CLR 96 (Del.H.C.).

PETITIONERS TRANSFERRED DID NOT DISCHARGE THEIR DUTIES:

In a challenge to the order of Central Administrative Tribunal, interfering with the impugned transfer orders and remitting the matter for reconsideration, the Allahabad High Court held that there is no dispute that at the time the interim order was granted, the respondents-transferees had been dislodged from their posts and in their place other employees had been posted, filling up consequential vacancies. In the circumstances therefore not only because the interim order could not be an order quashing the impugned orders of transfer, but as the petitioners had not discharged their duties, the principle of `no work no pay' had to be taken to be attracted and consequently no direction for payment of salary ought to have been issued.

– Commissioner, *Vidyalaya Sanghatana v. Central Administrative Tribunal & Ors.* 2004 (102) FLR 298 (All.H.C.).

While concluding this exercise, I would like to recall the words of Late Shri Mahatma Gandhi who told us from the very beginning that a right without duty does not exist. The socialist principle `no work no pay' is not a mere jurimetrical statement; it provides a new jurisprudential thinking that it is possible to have a system based on duties only with corresponding rights. Let the worker-force realize and recognise what Gandhiji said that the only right a person has, is to do his duty and herein lies the importance of the doctrine `no work no pay'.