

40. Strike and lock-out: (1) If no settlement is arrived at during the course of conciliation proceedings and the parties to the dispute do not agree to refer it to an Arbitrator under Section 39, the workmen may go on strike, the employer may declare a lock-out, on the expiration of the period of the notice under Section 36 or upon a declaration by the conciliator that the conciliation proceedings have failed, whichever is later.

(2) The party raising a dispute may, at any time, either before or after the commencement of a strike or lock-out make an application to the Labour Court for adjudication of the dispute.

(3) Where a strike or lock-out lasts for more than thirty days, the Government may, by order in writing, prohibit the strike or lock-out.

(4) The Government may, by order in writing, prohibit a strike or lock-out at any time before the expiry of thirty days, if it is satisfied that the continuance of such a strike or lock-out is causing serious hardship to the community or is prejudicial to the national interest.

(5) In any case in which the Government prohibits a strike or lock-out, it shall forthwith refer the dispute to the Labour Court.

(6) The Labour Court shall, after giving both the parties to the dispute an opportunity of being heard, make such award as it deems fit, as expeditiously as possible, but not exceeding thirty days from the date on which the dispute was referred to it.

- (7) The Labour Court may also make an interim award on any matter in dispute.
- (8) Any delay by the Labour Court in making an award shall not affect the validity of any award made by it.
- (9) An award of the Labour Court shall be for such period as may be specified in the award which shall not be more than two years.

COMMENTS

1. **Declaration of strike or lock-out:** According to this section if the conciliator is not able to bring about an amicable settlement and reference to arbitration also fails or if no reference to arbitration is agreed upon, the workmen may go on strike, or the employer may declare a lock-out, whichever may be concerned, on the expiry of the notice period of 14 days, or on declaration by the Conciliator that the cancellation proceedings have failed, whichever is later.

Where the pay scales were not revised during the past ten years and the plea of financial losses was not proved and workers pleaded existence of better pay scales in neighbouring comparable concerns but produced no details of such pay scales the workers were held entitled to enhancement of wages by 20 per cent. **1974 PLC Note 131.**

Demand of Workers' Union that either alleged ticketless passenger be summoned and examined or the Enquiry Officer should proceed to residence of such passenger to record his statement with opportunity of cross-examination to accused. The demand was rejected. The management could not force attendance of such passengers and it was not feasible and convenient to shift place of enquiry in every such case to residence of passenger. **1984 PLC 446.**

Employers had served a demand notice on Employees' Union in establishment alongwith charter of demands, which was followed by notice of lock-out. Conciliation proceedings having failed, application was presented on part of employers before Court for adjudication of demands mentioned in the said application. Application filed by employers during pendency of industrial dispute raised by Employees' Union under Section 32 (1-A) (Now Section 40(2) of Punjab Industrial Relations Act, 2010) was liable to be dismissed especially when demands as set out in that application did not constitute an industrial dispute. **1994 PLC 109.**

2 **Dispute between Workers' Union and employers-- adjudication:** Settlement was arrived at between Union and employers in regard to charter of demands presented by Union, but before same could be

effective, employers had presented an application under S. 32 (1-A) of Ordinance, 1969 (Now under Sec. 40(2) of Punjab Industrial Relations Act, 2010) before Court for adjudication of their demands and Court for reasons given by it rejected some of demands of employers while allowed others. One of demands which was allowed by Court was that due to modification in machinery, workers who had become surplus should be retrenched. In case employers were of the view that they had some extra labour on their hand, it was not necessary to raise dispute about it, because they could resort to provisions made in S.O. 12 of the Standing Orders Ordinance, 1968. If any of workers felt aggrieved, it was open to him or them to seek redress of his or their grievances under law. Award by Court on that demand of employers, in circumstances, would be neither here nor there as rights of employers were every much there in statute book. Employers were not in need of any blessings from Courts on that score, the demand of employers was disallowed in appeal. 1993 PLC 1030.

3. Relinquishment of claim debars raising it again: Relinquishment of claim debars the party relinquishing claim from raising it again. Demand raised previously and relinquished subsequently cannot form the basis of fresh industrial dispute and strike notice. 1976 PLC 137.

4. Reference by the Government: Where a reference is made by the Provincial Government to the Labour Court, the Labour Court must make an award and the matter cannot be dismissed as withdrawn. Where the parties arrived at a settlement during the pendency of the dispute before the Labour Court under Section 32 (Now Sec. 40 of Punjab Industrial Relations Act, 2010) and made a joint application praying that the matter be dismissed as withdrawn, it was *held* that the Court rightly rejected the application and given award in terms of the settlement. 1972 PLC 297.

5. Dismissal of reference whether appealable: It was contended that an order of the Labour Court dismissing a reference under Section 32 (4) of the Industrial Relations Ordinance, 1969 (Now Sec. 40(6) of Punjab Industrial Relations Act, 2010) was merely a culmination of the proceedings pending before the Labour Court and not a determination of the dispute between the parties. It was also argued that the object of the decision, called award, is to resolve the difference between the parties and it cannot be said that the word "determination" in the definition of award just means putting an end to the proceedings in whatever manner it may be and therefore an order dismissing the reference for default cannot be determination of an industrial dispute. It was also contended that the phrase "any matter relating thereto" occurring in the definition of award cannot be given an interpretation so as to include an order whereby the Court may dismiss a reference in default for non-appearance of a party. The phrase "any matter relating thereto" has to be read *ejusdem generis* with the words "industrial dispute" to cover only controversies with regard to the

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employment or non-employment or the terms of employment or the conditions of work of any person.

6. Strike notice must be in form "U": Industrial dispute must be raised in the prescribed manner. Where strike notice was not given in the prescribed form "U" the dispute raised on the basis of such strike notice was held to be not valid. 1976 PLC 137.

7. Strike cannot be forced upon workers: The Workers' Union has the option to defer the strike even after the lapse of the statutory notice period. The employers cannot force workmen to enjoy or exercise their right of strike. If a strike is not actually commenced by the workers it cannot be presumed on the basis of the strike notice that it has commenced. 1971 PLC 294.

8. Valid settlement: Genuineness of alleged settlement denied of plea of its being fake, the Labour Court overruling legal objection, and the decision of Labour Court challenged in revision which was dismissed by Appellate Tribunal. *Held*, controversy about genuineness of settlement necessitate recording of evidence hence Labour Court correctly reached the conclusion that it was yet to be seen after evidence whether there existed a validly made settlement. 1995 PLC 299.

41. Strike or lock-out in public utility services:
(1) The Government in the case of a strike or lock-out relating to an industrial dispute in respect of any of the public utility services may, by order in writing, prohibit a strike or lock-out at any time before or after the commencement of the strike or lock-out.

(2) The provisions of Section 40 shall also apply to an order made under sub-section (1) as they apply to an order of the Government made under that section.

COMMENTS

1. Public utility service: "Public utility service" means any of the following services:--

- (1) Generation, production, manufacture, or supply of electricity, gas, oil, or water to the public.
- (2) Any system of public conservancy or sanitation.
- (3) Hospitals and ambulance cars.
- (4) Fire-fighting service.

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- (5) Any postal, telegraph or telephone service.
 - (6) Railway and Airway.
 - (7) Ports.
 - (8) Watch and Wards Staff and Security Services maintained in any establishment.

2. Prohibition of strike or lock-out: If the strike or lock-out relates to a dispute in a public utility service which the Labour Commission is competent to adjudicate and determine or if such strike or lock-out in such service relates to any other matter which the Commission is not competent to adjudicate and determine, the Federal Government in the former case and the Provincial Government in the latter case may by order in writing prohibit it either before or after its commencement. Thereafter the dispute shall be referred to the Labour Commission or the Labour Court, as the case may be, and an award shall follow after giving the parties usual hearing within 30 days at the latest. An interim award may also be given where it is expedient. Such an award shall have validity for two years at the most.

3. Right to go on strike: Workmen cannot go on strike pending proceedings before the Industrial Court. Strike notice served during pendency of proceedings before the Industrial Court is illegal and of no effect. Similarly conciliation proceedings initiated on such illegal notice are void and the settlement arrived at in such conciliation proceedings is not binding on the parties. **1966 PLC 268.**

Industrial dispute related to the factory area 1/4 of total strength of petitioner's employees employed in such factory area. Plea that dispute was not of national importance and hence could not be referred to National Industrial Relations Commission was repelled. Finding of such Commission that if factory at factory area was stopped working due to strike there would be loss of huge amount collected by the Government by way of taxes and as such action of Government was justified in the circumstances. **1985 PLC 884.**

55. Illegal strike or lock-out: (1) A strike or lock-out shall be illegal if--

- (a) it is declared, commenced or continued without giving to the other party to the dispute, in the prescribed manner, a notice of strike or lock-out or

before the date of strike or lock-out specified in such notice, or in contravention of Section 53;

- (b) it is declared, commenced or continued in consequence of an industrial dispute raised in a manner other than that provided in Section 52;
- (c) it is continued in contravention of an order made under Section 40, 41 or 54 or sub-section (3) of Section 56; or
- (d) it is declared, commenced or continued during the period in which a settlement or award is in operation in respect of any of the matters covered by a settlement or award.

(2) A lock-out declared in consequence of an illegal strike and a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.

COMMENTS

Procedure shall be adopted but due opportunity shall be provided to workers before issuing dismissal orders. Revision *suo motu*. 1992 PLC 895.

Labour Court ordered to stop illegal lock-out and ordered to pay wages for the lock-out period. Order was legal and just. NLR 1994 Labour 32.

56. Procedure in case of illegal strike or lock-out: (1) Notwithstanding anything contained in any other provision of this Act or in any other law an officer of the Government not below the rank of Assistant Director Labour Welfare, in this section referred to as the officer, may make enquiries in such manner as he may deem fit into an illegal strike or illegal lock-out in an establishment or group of establishments and make a report to the Labour Court.

(2) After completing the enquiry, the officer shall serve a notice on the employer and the collective bargaining agent or the registered trade union concerned with the dispute to appear before the Labour Court on a date to be fixed by that Court.

(3) The Labour Court may, within ten days following the day on which it receives a report under sub-section (1),

after considering the report and hearing such of the parties as appear before it, order the strike to be called off or the lock-out to be lifted.

(4) If the employer contravenes the order of the Labour Court under sub-section (3) and the Court is satisfied that the continuance of the lock-out is causing serious hardship to the community or is prejudicial to the national interest, it may issue an order for the attachment of the establishment or group of establishments and for the appointment of an official receiver for such period as it deems fit, and such period as may be varied from time to time.

(5) The official receiver shall exercise the powers of management and may transact business, enter into contracts, give valid discharge of all moneys received and do or omit to do all such acts as are necessary for conducting the business of the establishment or group of establishments.

(6) The Labour Court may, in appointing and regularizing the work of an official receiver exercise the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908).

(7) If the workers contravene the order of the Labour Court under sub-section (3), the Court may pass orders of dismissal against all or any of the striking workers and, notwithstanding anything to the contrary contained in the Act, if the Court, after holding such inquiry as it deems fit, records its finding that any registered trade union has committed or abetted the commission of such contravention, the finding shall have the effect of cancellation of the registration of such trade union and debarring all office-bearers of such trade union from holding office in that or in any other trade union for the un-expired term of their offices and for the term immediately following such terms.

(8) The Labour Court may review its order under sub-section (7), if good and sufficient cause is shown by an affected worker within seven days of an order of dismissal.

(9) Subject to any rules made by the Government in this behalf, the officer may, for the purpose of enquiry under

sub-section (1), within the local limits for which he is appointed, enter with such assistants, if any, being persons in the service of Pakistan, as he thinks fit, in an establishment or group of establishments, where he has reason to believe an illegal strike or lock-out to be in progress, and make such examination of the premises and plant and of any registers maintained therein and take on the spot or otherwise such evidence of persons and exercise such other powers as he may deem necessary for carrying out the purposes of this section.

(10) The officer may call any party to such dispute to his office or secure his presence in the establishment or group of establishment and may bind any party to the dispute to appear before the Labour Court.

(11) Where a party to an illegal strike or lock-out, on being required or bound under this section to appear before the officer or the Labour Court, does not so appear, the officer or Labour Court, may, besides taking such other action as may be admissible under this Act, proceed *ex parte*.

COMMENTS

1. **Procedure in case of illegal strike etc.:** Under the section an officer of Labour Department not below the rank of Assistant Director, Labour Welfare may inquire into an illegal strike or illegal lock-out and make a report to the Labour Court and require the party concerned to appear before the Labour Court on a date to be fixed by the Court. 1970 PLC 437.

Labour Court is competent to determine whether domestic enquiry was fairly conducted and was not violative of any law or principles of natural justice. PLJ 1978 Kar. 452.

2. **Termination from service:** Orders to take back workers in service were challenged before the Tribunal in revision. Existence of legal industrial dispute at relevant time was not proved. There was no question of illegal lock-out. Impugned order was set aside and report u/sec. 46-A (Now Sec. 33) was rejected. 1985 PLC 846.

57. Conditions of service to remain unchanged while proceedings are pending: (1) No employer shall, while any conciliation proceedings or proceedings before an Arbitrator, a Labour Court or Tribunal in respect of an