

Impact of Recent Judgments on Labour

Presentation by **Adv. Prem Krishan Sharma**

["Has the judiciary turned its back on the poor?" A Seminar, 4th Nov 2006, New Delhi]

After independence, the concept of social justice was introduced and the labour law developed more as a judgment law. There were various laws but with the intervention of judiciary, the labour law was moving in a progressive direction. The issues concerning the labour matters such as wage, minimum wage, fair wage, employment security, social security, etc. were initiated, right from the Express Newspaper's case.

Between 1970 and 1980, the definition of industry was widened; employment security was given to workman as a right. The right to get the back wages if the dismissal of the workman was found to be unjustified, and the worker's right to strike was declared as legitimate weapon for collective bargaining. Till 1980's, the labour laws were developed to suit the interest of working class. But now the recent judgements show that the judiciary has taken a U-turn.

In the SAIL case, the courts denied the workman the right of permanent employment while in the famous Tamil Nadu case, the right to strike was called morally and legally incorrect. Earlier a lawyer could successfully argue in the courts that by striking, a workman do not lose his right of employment. But with UP State Corporation case, it has been laid down that if the workman continues to be on strike then the employer can declare that he has voluntarily abandoned his services.

Since 1968, the burden of proof was on the party filing case against the worker. But in Municipal Corporation Faridabad's case, the burden of proof has been cast on the worker. If the worker was retrenched, still he has to prove that he worked for 240 days, while the attendance records are with the employer. In recent case of Uma Devi, the court remarked that the worker does not have any right to service even if he worked for 10 - 20 years as millions are waiting for employment.

When it is declared that by striking a workman can lose his job, the right to protest is lost. It is futile for the working class to fight at individual level, it can only assert through collective bargaining. The strike is the most peaceful way to assert. The right to work includes the right to not to work but when that right is denied, as a consequence of losing job, the workers can't strike.

After centuries of struggle, the working class got some security of employment and the right for fair opportunity and enquiry but it has been nullified. The worker was given the opportunity of fair hearing before he is thrown out even if it had its own limitations. In Guzari Steel's case, it was held that in case of the dispute between the management and the worker, the management could prove the worker guilty, the order of dismissal will be from the date when labour court has passed the order and will not date back to the earlier order of dismissal by

management. But now in the recent Punjab National case, it has been laid down that if the charge is proved against the worker in the labour court then the order will date back to the day of dismissal by the management.

What is the practical impact of this decision? An employer can hire and fire any workman any time without any enquiry and without any opportunity of hearing. And if the workman raises an industrial dispute, it takes 2-3 years for the case to get referred to the labour court. For instance, in Rajasthan even if the workman goes directly to the labour court, he has to prove whether he was an employee in the industry, which takes years. After that the management will come into picture and defend itself.

The Supreme Court in one of the recent judgements stated that the management is the best judge to decide about the conduct of an employee and such decision should not be made subject to judicial review. It is only in the condition when the judge becomes suspicious of the role of management that the judicial review comes into play but it is never practiced. It is clear that the Magna Carta created is for the employer not for the workman. According to Justice S. B. Sinha in U.P Brass case, the interpretation of labour laws, in this changed scenario of privatisation and globalisation, cannot be the same as it was in 80's.

During 70s and 80s, the success rate was 95 percent in the labour courts and the Rajasthan High Court. It was not necessary that the worker always got the relief but the judgements were upheld by High Courts and even Supreme Court in favour of the worker. But gradually after 90's the success rate has dropped to 5 percent.

Earlier when the judiciary was in support of the working class, it was not due to its pro-working class stand or greater understanding of socialism, as was in the case of E.M.S Namboodari pad. In fact, in those days the bourgeoisie and the ruling class were in need of the working class. But today the trade unions movements have become scattered and weak. The trade unions leaders are dependent on judicial decisions than taking the movement forward.

As a trade unionist, I feel that instead of struggling with the workers on the streets, most of our time was spent in the courts. It was nothing but betrayal of working class movement. Today's judgements have defied all employment security, and the right to strike. The positive impact was that we must come out of the illusion that the judicial system can help the struggle of working class. Judiciary is nothing but a tool in the hands of ruling classes. E.M.S. Namboodari pad had said this and was punished. In this age of privatisation and globalisation, we cannot implement labour laws in its true sense. We need to hasten the process of coming out of this illusion and struggle with the working class.