

Workers want bread, but they want roses, too!

Legality and Justifiability of Strikes

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The title of this article is closely associated with a slogan of the successful Lawrence textile mill strike in 1912. The popular mythology of the strike included signs being carried by women reading "*We want bread, but we want roses, too!*", the slogan was originated from a speech delivered by Rose Schneiderman. The said phrase was later inspired to create the poem and song known as "*Bread and Roses*".² A strike is always revolved around a demand not only to have a better payment for their service but to promote the working conditions as well. In essence, this slogan reflects nicely the general face of the demands which can be brought by the working class against their employer.

Several trade unions recently launched strikes in protest against *inter alia* salary anomalies prevail in the state sector. Such action caused a grave inconvenience to the public and the public demonstrated their displeasure towards strikers and the government.³ In this backdrop, it is appropriate to discuss the legality and justifiability of a strike. The author further extended his study to examine the repercussions of a strike.

In general, the employers tempt to make a profit by increasing the income and minimizing the cost including the cost of human capital. As a result, employers don't hesitate to improve the conditions of employees unless such demand comes from employees. The strike is a weapon in the hands of employees to dictate the terms and conditions over powerful employers including a democratically elected Government and the people at large. Though it has adverse repercussion, it would pave a way to win their demands. It would be a state of belligerent

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²Jone Johnson Lewis, 'The 1912 Lawrence Textile Strike' (*ThoughtCo* 21 April 2017) <https://www.thoughtco.com/1912-lawrence-textile-strike-3530831> accessed 19 January 2019

³Anonymous, 'Railway Unions continue strike for eleventh day' (*the Sunday Times* 06 October 2019) <http://www.sundaytimes.lk/191006/news/railway-unions-continue-strike-for-eleventh-day-371984.html> accessed 11 October 2019

suspension of their employment which carries out to promote the conditions of the employment.

The first known strike was in the 12th century B.C., in Egypt. Workers under Pharaoh Ramses III stopped working on the Necropolis until they were treated better⁴. The use of the English word 'strike' first appeared in 1768 when sailors in support of demonstrations in London, struck or removed the topgallant sails of merchant ships at port thus, thus crippling the ships⁵.

ORIGIN OF TRADE UNION IN SRI LANKA

In late 19th century, Mr A. E. Buultjens who returned to Sri Lanka after four years of studies at Cambridge, published an article in a monthly journal known as "Independent Catholic" highlighting the need for a trade union in Sri Lanka. Mr Buultjens in his article specifically addressed the issues of the printers in Ceylon. The strike of H.W Cave & Co, a leading firm of stationery and printers can be recognized as the first strike⁶ launched in Sri Lanka. It was led to form the Ceylon Printers Society⁷ which can be recognized as the first Trade Union formed not in Sri Lanka but also the whole of South-East Asia. The Trade Union elected Lisbao Pinto as the Chairman and A. E Buultjens as the Secretary of the Ceylon Printers Society.⁸ Though the first strike failed to obtain their demands, it was inspired the working class to organize strikes such as a strike of laundrymen (1896), of carters (1906), of railway workers (1912), of harbour and railway workers (1920).⁹

After 1920, Ceylon Labour Union led by A.E Goonesinghe was able to organize the first general strike with the participation of 20,000 workers. It was followed by a wave of successful strikes among the working class.¹⁰ As a result, the British commercial interest demanded from the

⁴⁴ Joshua J Mark, 'The First Labour Strike in History' (*Ancient History Encyclopedia* 4 July 2017) <https://www.ancient.eu/article/1089/the-first-labor-strike-in-history/> accessed on 27 October 2019

⁵ Holly Williams, 'The Timeline Strike' (*Independent* 14 May 2010) <https://www.independent.co.uk/news/world/politics/the-timeline-strikes-1972891.html> accessed 27 October 2019

⁶ Launched on 12th September 1893

⁷ Formed in 17th September 1983.

⁸ V. Sarvaloganayagam, *Trade Unions in Sri Lanka*, (Academy of Administrative Studies, Sri Lanka 1973) p 1-4

⁹ Jayawardena, V. Kumari. "Origins of the Left Movement in Sri Lanka." (*Social Scientist* 1974), vol. 2, no. 6/7. 3–28. JSTOR, www.jstor.org/stable/3516475 accessed on 21 October 2019.

¹⁰ *ibid*

Governor, Herbert Stanley, to regulate the trade union activities by promulgating a piece of legislation. The Governor submitted the first draft legislation for the approval of the Secretary to the State for Colonies in April 1929.¹¹ A.E Goonesinghe and S.A Wickramasinghe strongly opposed the requirement of the mandatory registration of the trade unions. Amidst the protests, the Trade Union Ordinance was promulgated in March 1935.¹² It took nearly 6 years to pass the legislation because of the heavy protests of trade union leaders. The provisions contained in the Ordinance for registration and immunity from civil and tort liability in furtherance of trade dispute strived the continuous association of workers and increased the number of unions in the country.¹³

The Minister assured the House that *“both in the spirit and execution, the Bill had been conceived in the best interest of Industrial Peace, keeping mind the view that the State was not going to stifle trade unions but give them greater confidence”*.¹⁴

The first trade union to be registered under the Trade Union Ordinance was, however not an association of the workers but the Employers’ Federation of Ceylon. The first workers association to be registered was the Sri Lanka Chauffeurs Association which was registered on 31st January 1936.¹⁵

RIGHT TO STRIKE

The trade union and the employer do negotiations frequently to promote the standards of the employees and the workplace. If such negotiation end without amicable settlement it could damage industrial relation with the employee and employer and industrial peace of the workplace. As a result, either of the party will act to inflict economic harm upon others.¹⁶ The

¹¹ V. Sarvaloganayagam, *Trade Unions in Sri Lanka*, (Academy of Administrative Studies, Sri Lanka 1973) p 7

¹² Ibid 9-10

¹³ Ibid 12

¹⁴ Ibid 9

¹⁵ Ibid 12

¹⁶ Ernest Manamela and Mpafari Budeli *“Employees’ right to strike and violence in South Africa”* (2013) 46 CILSA 308, 309, 323

collective bargaining power would be the counteraction of the employee to bring the employer to agree on their terms. The strike is a fundamental mode of the collective bargaining system.¹⁷

The right to strike is required to be protected by law unless trade unions would be pathetic, powerless bodies. In such circumstances, the employer would use absolute control over the employees. Therefore, without the recognition of the right to strike, it would not be genuine collective bargaining, though collective begging.¹⁸

Trade Unions Ordinance¹⁹, while defining the term “Trade Union”, recognized the promotion or organization or financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike or lock-out²⁰ as one of the objects of Trade Union.

Trade Union Ordinance²¹ expressly provided an interpretation of the term “strike” in the following manner.

*"strike " means the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment"*²²

However, in *Rubberite Company Ltd v Labour Officer, Negombo*²³, S.N Silva J (as he then was) elaborated the term “strike” as follows;

"The term strike generally denotes the collective action resorted to by a body of employees to express their grievances and to win their demands from an employer. According to the definition of the term in section 2 of the Trade Unions Ordinance, it

¹⁷ There are also other trade union actions like go slow, work to rule.

¹⁸ Ernest Manamela and Mpfari Budeli *“Employees’ right to strike and violence in South Africa”* (2013) 46 CILSA 308, 309

¹⁹ 14 of 1935

²⁰ *ibid* s2

²¹ No 43 of 1935

²² *ibid*, s2

²³ 1990 2 SLR 42

involves the cessation of work by a body of employees or a concerted refusal or a refusal under a common understanding to continue to work or to accept employment. Although generally, a strike is a means used against an employer there could be situations where a strike is resorted to by employees with other objectives. It would not be necessary for this judgment to consider the implications of such other species of strikes. The main feature of a strike is the cessation of work devoid of an intention on the part of those engaged in the strike to terminate their employment.”²⁴

Different kind of strikes has been identified in the labour law.²⁵The fundamental principle which constitutes a strike is the cessation of work including the partial stoppage of work. If any trade union activity such as hunger-strike²⁶ conducted will not be a cessation of work and therefore will not fall under the definition of a strike. However, if any trade union activity conducted accompanying with the cessation of work can be considered as a strike.

The Constitution of Sri Lanka does not provide specific provision to protect the right to strike as a fundamental right. Dr Wickramaratne argues that the right to form and join a trade union does not mean that a citizen has fundamental right only to form a trade union and to join a trade union. A citizen’s fundamental right would be infringed if, say, he is transferred out to curtail his trade union activities, not because of exigencies of service. Victimization of members of a particular trade union would, apart from unequal treatment also be an infringement of fundamental rights relating to trade unions. Curtailment of legitimate trade union activity in the guise of other ostensible purposes should not be permitted.²⁷

This issue came into the attention of the Supreme Court to determine in *J.A Yasapala v Ranil Wickramasinghe*²⁸. Dr. Colvin R De Silva referring to the aforementioned object of the trade union as contained in the Trade Unions Ordinance and contended that since the promotion of strike is one of the legitimate objects of the trade union and the freedom to form and join a

²⁴ Ibid 48

²⁵ General Strike, Gherao, Wild Strike, Political Strike, Wild cat strike, pen down strike, irritation strike, sympathy strike

²⁶ Hunger Strike can be defined as exerting moral pressure on others

²⁷ Jayampathy Wickramaratne, *Fundamental Rights in Sri Lanka* (2nd Edn Stamford Lake Publication 2013) 710-11

²⁸ SCFR 103/1980 decided on 8th December 1980; (1980) FRD (1) at page (143)

trade union is enshrined by Article 14(1)(d) of the Constitution, it followed that there is a fundamental right to a strike. However, Supreme Court refused the said contention and concluded that the right to strike cannot be recognized as a fundamental right under 14(1)(d) which guaranteed the freedom to form and join a trade union. Supreme Court further reasoned that if the fulfilment of every object for which a trade union of employees was formed where was held to be a fundamental right, the same freedom ought to be given to a trade union of employers and right to lock-out²⁹ also will have to be upheld as a fundamental right. This construction will create an absurdity.³⁰ Supreme Court agreeing with India case³¹ held that strike is a political and economic concept but has been considered in some courts as a legal right. At the most, it may be claimed as merely a common law right rather than being raised to the level of a fundamental right.³² Thus, it can be concluded that the strike is not a fundamental right but it can be described as a legal right which has been recognized by other legislative enactments.³³

A strike is a legitimate weapon in the hand of the workers to redress their grievances. it should be used as a "last resort" when all other avenues have proved futile and so long as it is used in a restrained, peaceful manner of good and justifiable reasons, it cannot be punished.

LEGALITY OF STRIKE

The right to strike has been recognized by necessary implication in the Labour and Industrial legislation in Sri Lanka. It is thus a recognized weapon of workmen to be resorted by them for asserting their bargaining power and promoting their collective demands upon an unwilling employer.³⁴ Therefore, every strike is a legitimate strike. but the law has identified certain

²⁹ Industrial action during which an employer withholds work and denies employees access to the place of work. In effect, it is a strike by the management to compel a settlement to a labour dispute on terms favourable to the employer.

³⁰ 1980 FRD (1) at page (162)

³¹ *All India Bank Employees Association v. National Industrial Tribunal* AIR (1962) SC 171

³² *Ibid* at page (161)

³³ Even in England, the right to strike was not recognized as a common-law right.

³⁴ *Kalamazoo Industries Ltd and Others v Minister of Labour, Vocational Training & Others* 1998 1 SLR 235, 245
Jayasuriya J

instances where a legitimate strike becomes an illegitimate once the process of the strike passes a certain threshold.

Right to strike cannot be considered granting a license to commit a criminal act or inflict damage or harm to the property or person. The legality of a strike is important as it is tied with adverse legal repercussions.

INDUSTRIAL DISPUTE ACT

The Industrial Disputes Act recognizes a basic right of workman to commence and to participate in a strike to express their grievances and to win their demands subject to the restrictions and prohibitions that are specifically laid down. Any strike conducted in contravention to the provisions stipulated in the Industrial Dispute Act is an illegal strike and liable to be prosecuted for committing an offence under provisions of the Industrial Disputes Act.

It has been recognized following offences in respect of strike under Industrial Dispute Act;

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(e) being bound by a collective agreement or by a settlement under this Act or by an award of an arbitrator or an industrial court and being a workman or a person or a person other than a workman, incites or induces a workman to strike or to discontinue employment or work, with a view to procuring the alteration of any of the terms and conditions of that agreement, settlement or award;

(f) being bound by a collective agreement or by a settlement under this Act or by an award of an arbitrator or an industrial court and being a workman, takes part in a strike or discontinues employment or work, with a view to procuring the alteration of any of the terms and conditions of that agreement, settlement or award;

(fff) takes part in a strike or discontinues employment or work with a view to procuring the alteration of any order made by a labour tribunal in respect of any application made to such tribunal under section 31B;

(m) being a workman, commences, continues, or participates in, or does any act in furtherance of, a strike in any industry after an industrial dispute in that industry has been referred for settlement to an industrial court, or for settlement by arbitration to an arbitrator, but before an award in respect of such dispute has been made;

(n) incites a workman to commence, continue, or participate in, or do any act in furtherance of, a strike in connection with any industrial dispute in any essential industry in contravention of section 32(2);

(o) incites a workman to commence, continue or participate in, or do any act in furtherance of, a strike in any industry after an industrial dispute in that industry has been referred for settlement to an industrial court, or for settlement by arbitration to an arbitrator, but before an award in respect of such dispute has been made”

Conducting strikes violating the above provisions or strikes' objects which are illegal under the common law can be described as illegal strikes. Though a notice is not a pre-requisite to launch a strike, it is mandatory to give such notice to launch a strike in essential industries or where notice is required to be given by collective or other agreements.³⁵ The procedure to be followed giving the notice has been laid down in regulation.³⁶ Industrial Dispute Act enacted to maintain industrial peace in general. Therefore, it was provided certain provisions in an essential industry to comply in respect of strike. It is required to be given written notice to the employer in the prescribed manner 21 days before the commencement of the strike stating the employees' intention to commence the strike.³⁷ The Minister in charge of the subject is empowered to declare any industry as an essential to the life of the community by publication of a gazette notification.³⁸

TRADE UNION ORDINANCE

The majority of the trade unions of this country are backed either by a political party or a political group. The trade unions have become a chorus girl who sings the same ditto of what

³⁵ S.R De Silva "Method of Trade Union Action" (1969) 2 Vidyodhaya J 59, 63

³⁶ Gazette notification bearing number 11688 dated 2nd March 1959

³⁷ Industrial Dispute Act, S 32(2)

³⁸ Ibid s48

the political party sings. As a result, most of the strikes on the face of the demands take a political ideology behind it. However, it is hard to distinguish the objects of strikes with other objects as the political, social and economic factors are inextricably linked.

A strike may be political in three senses. It may be a purely political strike where the aims are exclusively non-occupational. It may be political in the sense that it aims is the defence of certain occupational interests, but it becomes political because the State intervenes or it may be political in the sense that it aims is the defence of the employees' long-term occupational interests which are affected by State decision such as investment and wage policy.³⁹Trade Union Ordinance has provided to constitute a political fund for the promotion of civic and political interests of its members.⁴⁰ Such fund can be used to fund to achieve the political objects set out in the said Ordinance.⁴¹ Conducting a strike for the Political reason is not one of the objects thus, the strike cannot be launched for political purposes.

Trade Union Ordinance recognized the promotion or organization or financing of strikes in any trade or industry or the provision of pay or other benefits for its members during a strike is one of the objectives of the trade union. It is mandatory to register a trade union to take part in any trade dispute or promote, organize or finance any strike or provide payment or other benefits for its members during a strike.⁴² The members of the trade union are protected from civil actions and torturous act done in furtherance of a trade dispute.⁴³

The Trade Unions Ordinance further restricted the creation of trade unions for certain professions such as Judicial officers, members of the armed forces, police officers and prison officers as well as the members of any corps established under the Agricultural corps Ordinance⁴⁴. Such restriction deprives concomitant privileges and rights of other employees enjoying including the right to strike. However, the author recommends creating an independent mechanism to resolve their grievances.

³⁹ S.R De Silva "*Method of Trade Union Action*" (1969) 2 Vidyodhaya J 59, 76

⁴⁰ Trade Union Ordinance No 43 of 1935, s 47(1)

⁴¹ Ibid s 47(2)

⁴² Ibid s 18(b)

⁴³ Ibid s 26, s 27

⁴⁴ Ibid s 20 (2)

ESSENTIAL PUBLIC SERVICES ACT⁴⁵

A strike by public servants can cause a disorder or disturbances or may even lead to a riot or commotion. It is not necessary that a strike should have been motivated to bring about disorder or tumult undermining the security of the State of jeopardizing political stability. It will be sufficient if the President reasonably apprehends that a strike by public servants may lead to a public disorder. He is the best judge of the situation as he is posted with all information and advice with what is behind the facade.

Excellency the President, in terms of section 2⁴⁶ of Essential Public Services Act, is empowered to declare any specific public service as an essential public service if he is in the opinion that such service is essential to the life of the community. Any person who fails to attend to work or perform work, obstruct, delay or prevent or any other acts which cease carrying out such work is guilty for offences⁴⁷. Where any person is prosecuted for an offence under this Act, it shall not be a defence for him to prove that any act or omission constituting the offence was done or omitted to be done by him in furtherance of a strike commenced by a trade union to which such person belongs⁴⁸.

A similar provision is contained in public security ordinance⁴⁹ as well. However, such provision is operated in a situation where the President declares an emergency in the country. Unlike the Essential Public Services Act, it shall be a defence under the Public Security Ordinance for an employee to prove that he was prevented from attending at his place of work or employment owing to illness or owing to the fact that transport facilities were not available for him to travel to such place.⁵⁰

SRI LANKA PORTS AUTHORITY ACT

⁴⁵ 61 of 1979

⁴⁶ *ibid* s 2(1)

⁴⁷ *Ibid* s.2(2)

⁴⁸ *ibid* s 6

⁴⁹ 25 of 1947 (as amended), s 17

⁵⁰ *Ibid* S 17(3)

It should be noted that Sri Lanka Ports Authority Act⁵¹ prohibited any member of the ports' security service to resort to strike action.⁵² However, it is required to create a mechanism to address and resolve the grievances of the said employees.

UNJUSTIFIABILITY OF STRIKE

In *Andhra Pradesh State Road Transport Corporation, Employees Union v. Andhra Pradesh State Transport Corporation, Hyderabad*⁵³ set out factors which decide the unjustifiability of the strike. Firstly, it should be considered whether the demands of the workmen genuine or were reasonable or inspired by an oblique motive, Secondly, whether the demands fair and reasonable. Thirdly, whether the workers try a less drastic method before going on a strike etc.

DEMANDS ARE UNJUSTIFIABLE AND REASONABLE

Industrial Disputes Act No 43 of 1950 defines an "industrial Dispute" as "*Any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen connected of employment or non-employment, or the terms of employment, or with the conditions of labour, or the termination of the services, or the reinstatement in service, of any person, and for this definition workmen includes a trade union consisting of workmen.*"

The Dispute relating to the condition of the employment cannot be decided by the Court. The trade Union or employees collectively bargaining with the employer to settle their demands relating to the conditions of their employment. Therefore, the final threat would be the strike.⁵⁴

Strike to be justified should be launched for economic demands. The first and foremost requirement of a justified strike is that it should be launched only for economic demands of the workmen like basic pay, dearness allowance, bonus, provident fund, gratuity, leave and holidays etc. The strike is justified only if it is connected with the current labour disputes. If the strike is launched for political reasons and not for any trade union object, the strike cannot be

⁵¹ 15 of 1979

⁵² Ibid s 71D

⁵³ 1970 L.I.C. 1225

⁵⁴ *United Engineering Workers' Union v Devanayagam* 69 NLR 289, 303-04

justified.⁵⁵ However, a trade union can launch a strike to support another trade union and their action and such trade union action has been described as a sympathy strike. It is not necessarily required the sympathy strikers to have a direct grievance for the dispute. In a sympathy strike, there is no dispute between the employer and strikers, thus, the authority suggests such action should be held as illegal and considered as a breach of the contract.⁵⁶

The mere fact that the demands are resulting in the strike are subsequently rejected by a tribunal does not render a strike unjustified unless the reasons for the demands are perverse and unsustainable. In judging the justifiability of a strike, the fairness and reasonableness of the demands by the employees would be an important factor, but it would not be fair to view the problem exclusively from the standpoint of whether the employees had first exhausted other legitimate means to have their grievances remedied prior to the embarking on a strike. It is material to consider the demands in question were made to improve conditions of service or were made with some other purposes in view.⁵⁷

STRIKE MUST BE THE LAST RESORT

Strike can be perfectly legal and yet be unjustified. As an example, if a strike conducted to the specific purpose of embarrassing the management of the company cannot be justified even it does not contravene any provision of the law. It is important to note that the strike should be the last weapon of any trade union or employee. If the workers use the strike as their first weapon, the implications would suggest that such strike conducted to put the company in trouble and therefore, cannot be justified.

The commencement and the continuance of a strike harm production and then it may lead to a closure of manufacturing establishments. Thus, it should be discouraged the misuse of strikes

⁵⁵ B.R. Ghaiye, *Misconduct in Employment (In Public and Private Sector)* (Eastern Book Co 1973) 414

⁵⁶ Uditha Egalahewa PC, 'Freedom of Association, Trade Union Action & Misconduct in Employment', (2013) Labour Tribunal Law Journal vol 2 part iv, 45

⁵⁷ S.R De Silva "*Method of Trade Union Action*" (1969) 2 Vidyodaya J 59, 69; *Western India Match Company Ltd. v. Wimco Mazdoor Union* (1957) LAC 322 (Lat); *Swadeshi Industries Limited v. Its workmen* (1960) II LLJ 78 (81) (SC)

and to control the deleterious and harmful consequences of its misuse in respect of industries as far as possible so that the economy of the country would not be adversely affected.⁵⁸

In *Best Footwear (Pvt) Ltd v Aboosally, Former Minister of Labour and Vocational Training and others*⁵⁹ observed that that the strike, in this case, has not been utilized as a last resort and this hasty and ill-considered decision to strike has caused cessation of production, considerable financial loss and detriment to the employer and an adverse effect on the economy of the country for which all blame must be imputed to the trade union in question. The Arbitrator has referred to this aspect and he has stated that the company has complained of financial loss, detriment and financial constraints. He had emphasized that several workmen are involved and granting of back wages for so long a period would certainly strain the resources of the company and perhaps even jeopardize its viability. In these circumstances the Court held that it is unreasonable and irrational, particularly having regard to the conduct of the trade union in question and its member workers and having particular regard to the conduct of the employer, to award back wages.⁶⁰

INVOLVE WITH CRIMINAL ACTS

On the other hand, the strike could be unjustified as it progresses. If the participants of the strike involve with any criminal activity such as inflicting damage to the properties or harm on people cannot be justified too.⁶¹ Broadly speaking, all acts which tend to destroy discipline would tantamount to acts of subversive discipline which may include misconduct relating to duty, negligence, going on illegal strikes, go slow, insubordination and disobedience of orders, riots and disorderly conduct etc.⁶²

Therefore, either the conduct of strikers or the purpose of the strike is important in deciding the justifiability of a strike. It is difficult to lay down a straightjacket test to identify

⁵⁸ 1997 2 SLR 137, 152 (CA)

⁵⁹ Ibid 152

⁶⁰ Ibid 152

⁶¹ O.P Malhotra, *'The Law of Industrial Disputes'*, (Vol. I, 5th Edition, Universal Law Publishing 1998) 397

⁶² Ibid 906

unjustifiability of a strike. but it rather depends upon on the facts and circumstances of each case.

CONSEQUENCES OF A STRIKE

In *United Engineering Workers' Union v Taos Ltd*⁶³, the Industrial Court took view that when an employee participates in a strike, he is exercising his right, he does not commit any offence when he takes part in a strike and an employer is not justified in dismissing a worker merely because he absents himself in furtherance of a strike. Action against a striker could be taken by an employer only when the strike is illegal and unjustified or when a striker commits misconduct by assaulting or threatening workers or by damaging the property of the employer.⁶⁴

Where a strike is illegal or unjustified, the employer can replace the strikers with new employees and is under no obligation to re-employ the strikers on the termination of the strike. In *Nidahas Karmika Saha Velanda Sevaka Vurthiya Samithiya Vs. Martinus C. Perera & Sons and All Ceylon Commercial & Industrial Workers' Union Vs. Hently (Garments) Ltd* the strikers were held not entitled to reinstatement as the strike was unjustified.⁶⁵

In *Ceylon Press Workers' Union Vs. The Ceylon Examiner Press Ltd.* a strike launched from the April 23rd to May 28. On May 15th the company, acting on the basis that the employees had vacated their posts, terminated their services with effect from April 23. Since the strike was illegal and unjustifiable, the Court upheld the contention that employees had vacated their posts.⁶⁶

In *All Ceylon Commercial & Industrial Workers' Union Vs. Asbestos Cement Industries Ltd.* the cause of the strike was the dismissal of the vice president of the branch union and the issue of show-cause notices to twenty-one employees. During the strike, the company put up a notice calling on the strikers to return to work by a certain date, failing which they would be

⁶³ 65 NLR 259

⁶⁴ S.R De Silva, "Method of Trade Union Action" (1969) 2 Vidyodhaya J 59, 72

⁶⁵ S.R De Silva, *Law of Dismissal* (Revised Edition Monograph 8, EFC) 88

⁶⁶ Ibid 88

considered to have vacated their posts. None of the strikers returns to work, whereupon the company recruited new labour including some who were on strike. The Industrial Court held that the strike was unjustified and that the non-employment of the strikers was justified.⁶⁷

In *Rubberite Company Ltd v Labour Officer, Negombo*, Justice Sarath N Silva considered that whether an employer could issue an ultimatum to workmen on a lawful strike requiring them to report for work before a specified date or in the alternative be considered as having ceased to be employees. He held that such an act on the part of an employer would be inconsistent with the basic right of the workmen to engage in a lawful strike to express their grievances and to win their demands. The right itself would be empty and devoid of any content if it is subject to the over-riding authority of an employer as stated above. Therefore, the Court held that an employer could not validly issue an ultimatum to a workman engaged in a lawful strike to report for work before a specified date or in the alternative be considered as having ceased to be an employee".⁶⁸

The employer cannot consider the employees have vacated from their employment for the fact that the employee refused to report to work while they were on strike. Just because the workmen failed to report for work in the prosecution of the strike, it is unreasonable and unrealistic in such circumstances to impute them an intention of abandoning their employment. It is logical and realistic to infer in such circumstances that they kept away from work to successfully prosecute the strike and to obtain their demands for an increase in their monthly wages.⁶⁹

According to the industrial practice in Sri Lanka, no wages are paid for the period of strike, whether it is legal, illegal, justified or unjustified.⁷⁰ However, it has been specifically included

⁶⁷ Ibid 88-9

⁶⁸ *Rubberite Company Ltd v Labour Officer, Negombo* (1990) 2 SLR 42, 52

⁶⁹ *Kalamazoo Industries Ltd and Others v Minister of Labour, Vocational Training & Others* (1998) 1 SLR 235, 246
Jayasuriya J

⁷⁰ S.R De Silva "Method of Trade Union Action" (1969) 2 Vidyodhaya J 59, 74

the period of the strike not due to any fault of the workman concerned, in calculating the completed service for computation of the gratuity.⁷¹

CONCLUSION

Although the employees have basic needs for their employment still, they are entitled to demand for the betterment of condition in their employment. In other words, the employees have bread still they are entitled to demand for roses. The right to strike can be described as a legal right. The strike is a strong weapon to use collectively to promote the conditions of the employment and it must be the last weapon too. Such strong power cannot be used violating the provisions of the Industrial Dispute Act or any other provisions of law. On the other hand, the demands must be bona fide and reasonable and cannot be influenced by extraneous objectives. The Strikers shall not involve any criminal act by inflicting harm on property or people of the employer. Therefore, the Strikers can demand the roses but shouldn't harm the peddles of roses.

The strike has legal consequences. The strikers are not entitled to any back wages for the period of the strike even it is legal and justified. If the strike is illegal and unjustified, the strikers are liable to be dismissed from the employments and being prosecuted if it violates the Section 40 of the Industrial Dispute Acts or failure to give 21 days' notice before the strike in terms of Essential Services Ordinance. As such, the employees should keep in mind that employees can pluck the Rose flower but have to be cautious about the thorns in its stem.

⁷¹ Payment of Gratuity Act No 12 of 1983, s20