

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 12.09.2008**

+ **W.P.(C) No.10744/2006**

*(Against the Award dated 22.12.2005 passed in
Complaint No.15/2004 titled Shri Suresh Chand v.
M/s.Richa & Company)*

M/s.Richa & Company Petitioner
Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Suresh Chand Respondent
Through: Mr.M.Z.Chaudhary, Advocate.

+ **W.P.(C) No.10765/2006**

*(Against the Award dated 22.12.2005 passed in
Complaint No.16/2004 titled Shri Upendar Prasad v.
M/s.Richa & Company)*

M/s.Richa & Company Petitioner
Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Upendar Prasad Respondent
Through: Mr.M.Z.Chaudhary, Advocate.

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W.P.(C) No.10740/2006

(Against the Award dated 22.12.2005 passed in Complaint No.17/2004 titled Shri Bhagwan Singh v. M/s.Richa & Company)

M/s.Richa & Company

..... Petitioner

Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Bhagwan Singh

..... Respondent

Through: Mr.M.Z.Chaudhary, Advocate.

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W.P.(C) No.10760/2006

(Against the Award dated 22.12.2005 passed in Complaint No.18/2004 titled Shri Mohar Singh v. M/s.Richa & Company)

M/s.Richa & Company

..... Petitioner

Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Mohar Singh

..... Respondent

Through: Mr.M.Z.Chaudhary, Advocate.

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W.P.(C) Nos.11684-85/2006

(Against the Award dated 22.12.2005 passed in Complaint No.19/2004 titled Shri Sunil Kumar v. M/s.Richa & Company)

M/s.Richa & Company & Anr.

..... Petitioners

Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Sunil Kumar

..... Respondent

Through: Mr.M.Z.Chaudhary, Advocate.

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W.P.(C) No.10759/2006

(Against the Award dated 22.12.2005 passed in Complaint No.20/2004 titled Shri Mohammad Nasir v. M/s.Richa & Company)

M/s.Richa & Company Petitioner
Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Mohammad Nasir Respondent
Through: Mr.M.Z.Chaudhary, Advocate.

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W.P.(C) No.11272/2006

(Against the Award dated 22.12.2005 passed in Complaint No.21/2004 titled Shri Prabhu Nath Rajak v. M/s.Richa & Company)

M/s.Richa & Company & Anr. Petitioners
Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Prabhu Nath Rajak Respondent
Through: Mr.M.Z.Chaudhary, Advocate.

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W.P.(C) No.10743/2006

(Against the Award dated 22.12.2005 passed in Complaint No.22/2004 titled Shri Parmatma Tiwari v. M/s.Richa & Company)

M/s.Richa & Company Petitioner
Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Parmatma Tiwari Respondent
Through: Mr.M.Z.Chaudhary, Advocate.

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W.P.(C) No.9832/2006

(Against the Award dated 22.12.2005 passed in Complaint No.23/2004 titled Shri Vishwanath Jha v. M/s.Richa & Company)

M/s.Richa & Company

..... Petitioner

Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Vishwanath Jha

..... Respondent

Through: Mr.M.Z.Chaudhary, Advocate.

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W.P.(C) No.10758/2006

(Against the Award dated 22.12.2005 passed in Complaint No.24/2004 titled Shri Raman Jee Jha v. M/s.Richa & Company)

M/s.Richa & Company

..... Petitioner

Through: Ms.Raavi Birbal, Advocate.

Versus

Shri Raman Jee Jha

..... Respondent

Through: Mr.M.Z.Chaudhary, Advocate.

CORAM :-

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

1. The petitioner has impugned the awards dated 22nd December, 2005 passed by Industrial Tribunal-II, Delhi in these petitions directing the petitioner/management to fix the duty hours of the workmen/respondent in different petitions, from 9.30 AM to 6.00 PM as was done by the management prior to 1st July, 2002 and not to fix the working hours from 9.30 AM to 6.15 PM as has been done by the petitioner/management.

2. The awards dated 22nd December, 2005 were given in the applications filed by different workers/respondents under section 33 A of the ID Act, 1947. The different awards were during the pendency of complaint no. 22 of 1998 filed by Richa & Co. Karamchari Union Regd. The awards were given in complaint no.17/2004, Sh. Bhagwan Singh v. M/s Richa & Company; in complaint No.16/2004, Sh.Upender Singh v. M/s.Richa & Company; in complaint No.19/2004, Sh.Sunil Kumar v. M/s.Richa & Company; in complaint No.23/2004, Sh.Vishwanath Jha v. M/s.Richa & Company; in complaint No.21/2004, Sh.Prabhu Nath Rajak v. M/s.Richa & Company; in complaint No.18/2004, Sh.Mohar Singh v. M/s.Richa & Company; in complaint No.20/2004, Sh.Mohammad Nasir v. M/s.Richa & Company; in complaint No.24/2004, Sh.Raman Jee Jha v. M/s.Richa & Company; in complaint

No.15/2004, Sh.Suresh Chand v. M/s.Richa & Company; and in complaint No.22/2004, Sh.Parmatma Tiwari v. M/s.Richa & Company.

3. Brief relevant facts for comprehension of the disputes between the parties in these petitions are as given hereinafter. The petitioner is a partnership firm carrying on manufacture of readymade garments. The working hours of the petitioner's firm were 9.30 AM to 6 PM which included a tea break from 4 to 4.15 PM. From 1st July, 2002 the management changed the working hours from 9.30 AM to 6.15 PM, an addition of 15 minutes in the working hours.

4. The increase of working hours was in consonance with Section 51 of the Factories Act, 1948 which contemplates that working hours in a factory shall not be more than 48 hours in a week. Section 51 of the Factories Act, 1948 is as under:-

“Section 51. Weekly Hours-

No adult worker shall be required to allowed to work in a factory for more than forty eight hours in a week.”

5. The change in working hours of the workmen were made by the petitioner/management during the pendency of a reference of disputes raised by the workers union regarding annual increment, transport allowance, summer and winter uniforms and enhancement in tea

allowance. The reference which was pending on behalf of workers union when the increase in working hours in accordance with Section 51 of the Factories Act, 1948 was made was as under:-

“Whether the workmen are entitled to annual increment, and if so at what rate and what directions are necessary in this respect?

Whether the workmen are entitled to Transport allowance and if so at what rate and what directions are necessary in this respect?

Whether the workmen are entitled to Summer and Winter Uniform and if so, and what directions are necessary in this respect?

Whether the workmen are entitled to enhancement in tea allowance for Rs.1/- to Rs.3/- per tea or canteen facility in lieu thereof and if so, what directions are necessary in this respect?”

6. As the working hours were changed by the petitioner, first a complaint was filed by the union of the workers/respondents contending that the petitioner/management had increased the working hours by 15 minutes per day without obtaining the approval or permission of the Tribunal, as another reference of disputes was pending and, therefore, the act of the petitioner/management is illegal and unjust and bad in law. The union of the workmen, therefore, sought initiation of action against the petitioner management for violation of Section 33 (1)(a) of the I.D Act, 1947 under Section 33 A (b) of the Industrial Disputes Act, 1947.

7. The complaint was contested by the petitioner contending inter-alia about its maintainability as according to petitioner the union of workers failed to show that Section 33 of I.D Act, 1947 had been violated in any manner. The application under Section 33A being Complaint no. 12 of 2002 filed by the Union in I.D No.22/1998 was, however, dismissed by an award dated 7th February, 2004 holding that application of the union under section 33 A of the ID Act, 1947 was not maintainable.

8. After dismissal of the application/complaint filed by the union of workers/respondents against increase of working hours to 9.30 AM to 6.15 PM, different respondents/workmen filed different applications under section 33 A of the ID Act, 1947 seeking same relief. The applications were filed by the workers/respondents under Section 33 A in the same pending I.D No.22/1998 about the change of duty hours and they again alleged violation of Section 33 of the I.D Act, 1947. The petitioner opposed the applications/complaints and contended that the subject matter of the complaints filed by the workmen and the pending reference are not connected and are all together different and independent of each other and, therefore, the provisions of Section 33 of the I.D Act was not attracted. The petitioner also contended that there is no change in the service condition of the employees of the factory and

they have been asked to do normal work in accordance with law and as per provisions of Factories Act, 1948 and, therefore, there is no violation of any provision of law.

9. After considering the pleas and contentions and evidence recorded on behalf of the parties, the awards dated 22nd December, 2005 were passed by the Industrial Tribunal-II holding that the change of timings from 9.30 AM to 6 PM to 9.30 AM to 6.15 PM is a material change in the condition of service of the employees and consequently the management could alter the condition of service in compliance with Section 33 sub Section (1) Clause (a) only with prior approval. Since the management/petitioner has altered the condition of service applicable to the workers during the pendency of I.D No.22/1998 without compliance of standing orders or prior approval, there is violation of Section 33 (1) (a) of the I.D Act and, therefore, directed the petitioner/management to re-fix the duty hours from 9.30 AM to 6.00 PM. The petitioner has challenged the awards passed on different applications/complaints of different workers in these writ petitions.

10. The writ petitions are contested by different respondents in these petitions on the same grounds alleging that though the workers are bound to work minimum eight hours a day and forty eight hours a week, however, the change in timings could not be done by the

petitioner without the prior permission of the Authority/Tribunal as the reference of disputes raised by their union about other condition of service was pending. It was alleged that present writ petitions have been filed to pressurize and harass the workers as they are not in a position to continue the litigation financially and are unable to bear the expenses. It was also contended that the petitioner has not come to the Court with clean hands. It has, however, been admitted that a similar application/complaint was also filed by their union which was dismissed. It was denied by the different workers that they have been misguided.

11. I have heard the learned counsel for the parties in detail and have perused the impugned awards, pleadings and the evidence. The learned counsel for the petitioner has relied on *May & Baker (India) Ltd v. Their Workmen*, AIR 1967 SC 678; *Orissa Oil India Mazdoor Union & Ors v. UOI & Ors*, 1990 Labour Industrial Cases 1146; *L.K.Textile Mills v. Its Workmen*, AIR 1961 SC 860 and *Strawboard Manufacturing Co. v. Gobind*, LLJ Vol.II 1962 in support of his pleas and contentions that the complaints by the workers under Section 33A of the Industrial Disputes Act, 1947 were not maintainable as there was no violation of either Section 33(1) or 33(2) of the Industrial Disputes Act, 1947. The plea of the respondent is that a general demand of entire members was pending as I.D No.22/1998 before the Tribunal and, therefore, the

workmen/respondents' service conditions could not be changed by changing the working hours without obtaining the permission from the concerned authority/Tribunal.

12. This is not disputed that the term of reference in I.D No.22/1998 is in respect of annual increment; transport allowance; entitlement of the workmen for summer and winter uniform and entitlement to enhancement in tea allowance. Section 33 A of the Industrial Disputes Act, 1947 is attracted where the employer has contravened section 33 of the said act which is as under:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings:

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance

with the standing orders applicable to a workman concerned in such dispute [or , where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],-

(a) alter, in regard to any matter not connected with the dispute, the conditions or service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute.--

(a) by altering to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation. -For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being [a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment , the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent, of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, such order in relation thereto as it deems fit:]

[Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such further period as it may thinks fit;

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired such proceedings being completed.]

13. Where section 33 is contravened by the management during the pendency of proceedings, any employee aggrieved by such contravention has a right to file a complaint against such contravention which is to be adjudicated as a dispute in accordance with the provisions of the Act. Section 33 A of the Industrial Disputes Act, 1947 is as under:-

33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding -

Where an employer contravenes the provisions of section 33 during the pendency of proceedings [before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention, may make a complaint in writing, [in the prescribed manner, -

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.]

14. Under section 33(1)(a) of the Act, an employer is not entitled to alter the conditions of service which are subject matter of the pending disputes. This section provides protection to a workman, provided an industrial dispute is pending and alteration in the service condition is with regard to any matter connected with the dispute and such alteration is prejudicial to his interest. For invoking violation of section 33 (1) (a) of the Act what is to be considered is whether the particular matter in regard to which the complaint of alteration of service is made is one which can be said to be connected with an industrial dispute which is already pending. It is only where the alteration effected by the

employer and the dispute pending before the tribunal is connected that the said section comes into play. If the alteration of conditions of service is not connected with the subject matter of the pending dispute the workman would not be entitled to the protection of section 33(1) (a).

15. A division Bench of Orissa High Court in 1990 Lab. I.C 1146 relying on *Air India Corporation, Bombay v. V.A.Rebellow*, 1972 Lab.I.C 668 and *Bhavnagar Municipality v. Alibhai Karmbhai*, (1977) I Lab.I.C 834 had held that in order to entitle a workman to the provision of clause (a) of the sub section (1) of section 33, the following conditions must cumulatively exist:

- i. There should be a pendency of any proceeding in respect of industrial dispute.
- ii. The workman claiming protection should not only be a workman within the meaning of section 2(s) of the Act, but also be a workman concerned in the pending dispute.
- iii. Alteration in question should have the effect of making a change in the conditions of service applicable to such workman which were applicable to him before the commencement of such proceedings and such alterations should be prejudicial to his interest; and
- iv. Such alteration should be in regard to any matter connected with the pending dispute.

16. On violation of section 33 of the ID Act, 1947, section 33A is attracted. In *Md Akhtar Hussain v. State of Bihar*, (1988) 1 LLJ 325(SC) the Apex Court has observed that “ in a complaint to the

tribunal under section 33A, the basic question that is to be considered by the concerned authority is, whether there has been a contravention by the employer of the provisions of section 33, and it is only in case it is found that there has, in fact, been such contravention, that the occasion arises for the authority to embark upon an adjudication to the dispute contained in the complaint, on its merits.” Section 33 has been enacted for the protection of the workman concerned in the dispute against victimization by an employer on account of his having raised an industrial dispute or his being a party to a pending industrial proceeding and to ensure that pending industrial disputes are brought to an expeditious determination in a peaceful atmosphere. In *Punjab Beverages Pvt. Ltd v. Suresh Chand* (1978) 2 LLJ 1,5 (SC) it was observed that “the purpose of the prohibitions contained in section 33 is twofold. On the one hand, they are designed to protect the workmen concerned during the course of industrial conciliation, arbitration and adjudication, against employer’s harassment and victimization, on account of their having raised the industrial dispute or their continuing the ‘pending proceedings’, on the other, they seek to maintain status quo by prescribing management conduct which may give rise to fresh disputes which further exacerbate the already strained relations between the employer and the workmen.”

17. It is also pertinent to note that section 33 in its current form was inserted into the Act by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956. Prior to the amendment, the employers were prevented from altering the service conditions of their workmen even in respect of matters not connected with the dispute. The employer could make no alteration in conditions of service to the prejudice of workmen even though the proposed alteration had no connection whatever with the dispute pending between him and his employees. The section had imposed a total ban on the employer exercising his common law or contractual right to alter the conditions of service of a workman. That is why by amending this section in 1956, the legislature had made a broad division between action proposed to be taken by the employer in regard to any matter connected with the dispute on the one hand, and action taken in regard to matter not connected with the dispute pending before the authority on the other. In *Lord Krishna Textile Mills v. Its Workmen* (1961) 1 LLJ 211, 214 (SC), the Apex Court had considered section 33 prior to its amendment in 1956 and ramification of amendment in the said section. The Supreme Court had held as under:

“Before, however, we turn to the interpretation of the proviso we may refer to the circumstances in which S.33(2) came to be enacted. Originally there was no such provision like S.33(2) in the Act and the only provision to be found therein corresponded to the present S.33(1). The object behind enacting S.33 as it was before the amendment of

1956 was to allow continuance of industrial proceedings pending before any authority prescribed by the Act in a calm and peaceful atmosphere undisturbed by any other industrial dispute. The plain object of the section was to maintain the status quo as far as possible during the pendency of any industrial dispute before a tribunal. But it seems to have been felt that S.33, as it stood before the amendment of 1956, was too stringent for it completely took away the right of the employer to make any alteration in the conditions of service or to make any order of discharge or dismissal without making any distinction as to whether such alteration or such an order of discharge or dismissal was in any manner connected with the dispute pending before an industrial authority. It seems to have been felt therefore that the stringency of the provision should be softened and the employer should be permitted to make changes in conditions of service etc. which were not connected with the dispute pending before an industrial tribunal. For the same reason it was felt that the authority of the employer to dismiss or discharge a workman should not be completely taken away where the dismissal or discharge was dependent on matters unconnected with the dispute pending before any tribunal. At the same time it seems to have been felt that some safeguards should be provided for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. Consequently S.33 was redrafted in 1956 and considerably expanded. It is now in five sub-sections while before 1956 it consisted practically of what is now Sub-sec. (i).

The present scheme therefore of S.33 is as follows :-

Sub-section (i) refers to matters connected with a dispute which might be pending and forbids any alteration to the prejudice of the workmen concerned in such dispute, in the conditions of service applicable to them immediately before the commencement of the industrial proceedings resulting from such dispute and also forbids the employer from discharging or punishing any workman whether by dismissal or otherwise in connection with any matter connected with the dispute; and the employer, if he wants to make any alteration in the conditions of service or to punish any workman or discharge him, must get the express permission of the authority before which the proceeding relating to the dispute might be pending. Thus

Sub-sec. (i) lays down that if an employer proposes to alter any conditions of service or proposes to punish or discharge a workman in relation to a matter connected with the dispute which might be pending before a tribunal the employer must put such proposal before the tribunal and obtain its express permission in writing before carrying out the proposal whether it be for alteration of any conditions of service or for punishment or discharge of a workman by dismissal or otherwise.

Sub-section (2)(a) on the other hand gives power to the employer to alter any conditions of service not connected with the dispute and this the employer can do without approaching at all the tribunal where the dispute may be pending. It further permits the employer to discharge or punish, whether by dismissal or otherwise, any workman where this may be on account of any matters unconnected with the dispute pending before the tribunal; but such discharge or dismissal is subject to the proviso, which imposes certain conditions on it. The intention behind enacting sub-sec (2) obviously was to free the employer from the fetter which was put on him under S.33 as it was before the amendment in 1956 with respect to action for matters not connected with a dispute pending before a tribunal. So far as conditions of service were concerned, if they were unconnected with matters in dispute the employer was given complete freedom to change them, but so far as discharge or dismissal of workmen was concerned, though the employer was given freedom, it was not complete and he could only exercise the power of discharge or dismissal subject to the conditions laid down in the proviso. Even so, these conditions in the proviso cannot be so interpreted, unless of course the words are absolutely clear, as to require that the employer must first obtain approval of the tribunal where a dispute may be pending before passing the order of discharge or dismissal of a workman, for on this interpretation there will be no difference between S.33(1)(b) and S.33(2)(b) and the purpose of the amendment of 1956 may be lost.

18. This cannot be disputed by the respondent that the term of reference in which complaint under section 33 A has been made by the respondents is as follows:

“Whether the workmen are entitled to annual increment, and if so at what rate and what directions are necessary in the respect?

Whether the workmen are entitled to transport allowance and if so at what rate and what directions are necessary in this respect?

Whether the workmen are entitled to Summer and Winter Uniform and if so, what directions are necessary in this respect?

Whether the workmen are entitled to enhancement in tea allowance for Rs.1/- to Rs.3/- per tea or canteen facility in lieu thereof and if so, what directions are necessary in this respect?

Therefore the term of reference of the disputes pending before the tribunal was pertaining to annual increment, transport allowance, summer and winter uniforms, enhancement of tea allowance etc. The alteration in conditions of service alleged to have been brought about by the petitioner is the increase in work timings of the respondents. The work timings were changed from 9.30 to 6.00 PM to 9.30 to 6.15 PM. The effect of this change was that the work hours per day of the workmen were increased from 7 hours 45 minutes to 8 hours. The respondents in these writ petitions have admitted that the workmen are bound to work minimum 8 hours a day and 48 hours a week. They have also admitted that they are being paid salary for 8 hours of work

per day. A change in work timings cannot be said to be a matter connected with the pending disputes which were concerned with general demands like increments, allowances etc.

19. Section 33(2)(a) of the ID Act gives a right to the employer to alter the conditions of service of a workman, in regard to any matter not connected with the pending industrial dispute, which were applicable to him immediately before the commencement of the proceedings in respect of that industrial dispute, provided, such alteration has been made in accordance with the standing orders applicable to the concerned workman or where there are no such standing orders, in accordance with the terms of contract whether express or implied, between the employer and the workman. The proviso that has been appended to section 33(2) applies only to clause (b) of section 33(2) and not to clause (a) thereof. So if the alteration has been brought about in accordance with the standing orders or the terms of contract between the employer and the workman, then no prior approval of the tribunal is required. In *Lord Krishna Textile Mills v. Its Workmen*, AIR 1961 SC 860 the Apex Court had held that “.....It is obvious that in cases of alteration of conditions of service falling under section 33(2)(a) no such approval is required and the right of the employer remains unaffected by any ban”. In *Strawboard Mfg. Co. v. Gobind* it was held that “....sub-section 2(a), on the other hand, gives power to the employer to alter any

conditions of service not connected with the dispute and this the employer can do without approaching at all the tribunal where the disputes may be pending.” The Supreme Court had considered the extent of jurisdiction of Tribunal under section 33 (2) (b) and had held in AIR 1961 SC 860, *The Lord Krishna Textile Mills v. Its Workmen*, in para 10 as under:

10. It would be noticed that even during the pendency of an industrial dispute the employer’s right is now recognised to make an alteration in the conditions of service so long as it does not relate to a matter connected with the pending dispute, and this right can be exercised by him in accordance with the relevant standing orders. In regard to such alteration no application is required to be made and no approval required to be obtained. When an employer, however, wants to dismiss or discharge a workman for alleged misconduct not connected with the dispute he can do so in accordance with the standing orders but a ban is imposed on the exercise of this power by the proviso. The proviso requires that no such workmen shall be discharged or dismissed unless two conditions are satisfied; the first is that the employee concerned should have been paid wages for one month, and the second is that an application should have been made by the employer to the appropriate authority for approval of the action taken by the employer. It is plain that whereas in cases falling under Section 33(1) no action can be taken by the employer unless he has obtained previously the express permission of the appropriate authority in writing, in cases falling under sub-section (2) the employer is required to satisfy the specified conditions but he need not necessarily obtain the previous consent in writing before he takes any action. The requirement that he must obtain approval as distinguished from the requirement that he must obtain previous permission indicates that the ban imposed by Section 33(2) is not as rigid or rigorous as that imposed by Section 33(1). The jurisdiction to give or withhold permission is *prima facie* wider than the jurisdiction to give or withhold approval. In dealing with cases falling under Section 33(2) the industrial authority will be entitled to enquire whether the proposed action is in accordance with the standing orders, whether the employee concerned has been paid wages for one month, and whether an application has been made for approval as prescribed by the said sub-section. It is obvious that in cases of alteration of conditions of service falling under Section 33(2)(a) no such approval is required and the right of the employer remains unaffected by any

ban. Therefore, putting it negatively the jurisdiction of the appropriate industrial authority in holding an enquiry under Section 33(2)(b) cannot be wider and is, if at all, more limited, than that permitted under Section 33(1), and in exercising its powers under Section 33(2) the appropriate authority must bear in mind the departure deliberately made by the legislature in separating the two classes of cases falling under the two sub-sections, and in providing for express permission in one case and only approval in the other. It is true that it would be competent to the authority in a proper case to refuse to give approval, for Section 33(5) expressly empowers the authority to pass such order in relation to the application made before it under the proviso to Section 33(2)(b) as it may deem fit; it may either approve or refuse to approve; it can, however, impose no conditions and pass no conditional order.

20. Therefore, it is apparent that the disputes pending before the Tribunal pertaining to annual increment, transport allowance, summer and winter uniforms and enhancement of tea allowance etc was not connected to dispute about increase of the working hours. From the aforesaid it is clear that there is no violation of Section 33(1)(a) of the Industrial Disputes Act as the subject matter involved regarding the timings of the workmen is different from the subject matter of reference.

21. It is also apparent that there is no violation of Section 33(1)(b) of the Industrial Disputes Act as the same relates to discharge or punishment and none of the respondents in the petitions have been either discharged or punished. The increase of working hours from 9.30 AM to 6 PM to 9.30 AM to 6.15 PM is also in compliance with Section 51 of the Factories Act, 1948 which contemplates and mandates that working hours in a factory shall not be more than 48 hours in a week.

Consequently, there is no violation of Section 33(2)(a) of the Industrial Disputes Act which clearly states that “the employer may in accordance with the standing orders applicable to a workman concerned in such dispute (or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman) alter, in regard to any matter not connected with the dispute, the conditions or service applicable to that workman immediately before the commencement of such proceeding.”

22. The petitioner, therefore, has changed the timing of working of the respondents from 9.30 AM to 6.15 PM in accordance with the Factories Act according to which a workman can be made to work up to 48 hours in a week. The respondents in their counter affidavits have not denied or disputed that they are bound to work 8 hours a day and 48 hours a week. It is not disputed that the respondents are paid emoluments according to the work done by them. The only objection of the respondents in various writ petitions is that the petitioner could not change the working hours without obtaining permission from the concerned authority/Tribunal as earlier the respondents were made to work for 7 hours and 45 minutes a day whereas the salary was paid to them for 8 hours and on revision of working time from 9.30 AM to 6 PM to 9.30 AM to 6.15 PM they are working for 8 hours for which the salaries are paid to them.

23. In *Management of May & Baker India Ltd v. Their Workmen*, AIR 1967 SC 678 the Supreme Court had held that the tribunal was not justified in reducing the working hour which was well within the hours of work prescribed under Delhi Shops and Establishments Act and, therefore, the tribunal's order was set aside and the workmen were directed to continue working hours which was within the hours of work prescribed under the Delhi Shops and Establishments Act. Consequently, it cannot be held that there is violation of Section 33(1)(a) of Industrial Disputes Act so as to attract the provision of Section 33(a) of the Industrial Disputes Act.

24. Therefore for the aforesaid reasons, the complaints under Sections 33 (A) of Industrial Disputes Act, 1947 being Complaint No.15/2004 titled *Shri Suresh Chand v. M/s.Richa & Company*; Complaint No.16/2004 titled *Shri Upender Prasad v. M/s.Richa & Company*; Complaint No.17/2004 titled *Shri Bhagwan Singh v. M/s.Richa & Company*; Complaint No.18/2004 titled *Shri Mohan Singh v. M/s.Richa & Company*; Complaint No.19/2004 titled *Shri Sunil Kumar v. M/s.Richa & Company*; Complaint No.20/2004 titled *Sh.Mohammad Nasir v. M/s.Richa & Company*; Complaint No.21/2004 titled *Shri Prabhu Nath RajakSuresh Chand v. M/s.Richa & Company*; Complaint No.22/2004 titled *Shri Parmatma Tiwari v. M/s.Richa &*

Company; Complaint No.23/2004 titled Shri Vishwanath Jha v. M/s.Richa & Company and Complaint No.24/2004 titled Shri Raman Jee Jha v. M/s.Richa & Company are dismissed and the awards dated 22nd December, 2005 passed in the above-said complaints are also set aside. The petitioner was entitled to change the working hours from 9.30 AM - 6.00 PM to 9.30 AM to 6.15 PM and no approval of Industrial Tribunal in ID No.22/98 was required for the same.

25. With these directions, the writ petitions being W.P.(C.) Nos.10744/06, 10765/06, 10740/06, 10760/06, 11684-85/06, 10759/06, 11272/06, 10743/06, 9832/06, 10758/06 are allowed, however, parties are left to bear their own costs.

September 12, 2008
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ANIL KUMAR, J.