

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

**W.P. (C) 7387/2011**

CONTAINER CORPORATION OF INDIA LTD. .... Petitioner

Through: Mr. A.S. Chandhiok, ASG with  
Mr. Manoj Kumar Singh,  
Mr. Ritesh Kumar,  
Mr. Piyush Sanghi,  
Mr. Sidharth Tyagi and  
Ms. Shweta, Advocates.

versus

SANJEEV KUMAR ..... Respondent

Through: Mr. Atul T.N., Advocate.

**CORAM: JUSTICE S. MURALIDHAR**

- |                                                                       |     |
|-----------------------------------------------------------------------|-----|
| 1. Whether Reporters of local papers may be allowed to see the order? | No  |
| 2. To be referred to the Reporter or not?                             | Yes |
| 3. Whether the order should be reported in Digest?                    | Yes |

**ORDER**  
**10.10.2011**

**CM No. 16737/2011 (for exemption)**

Exemption allowed, subject to all just exceptions.

The application is disposed of.

**Caveat Nos. 909 & 910 of 2011**

Mr. Atul T.N., Advocate appears on advance notice on behalf of the Respondent/caveator and waives service of notice. Therefore the caveats are disposed of.

**W.P. (C) No. 7387/2011 & CM No. 16736/2011 (for stay)**

1. With the consent of learned counsel for the parties the writ petition is heard finally.

***Background Facts***

2. The Container Corporation of India Ltd. ('CCIL') has in this writ petition challenged an Award dated 27<sup>th</sup> July 2011 passed by the Central Government Industrial Tribunal ('CGIT') allowing an application filed by the Respondent-workman under Section 33A of the Industrial Disputes Act, 1947 ('ID Act') and declaring the order dated 26<sup>th</sup> March 2004 passed by CCIL removing the workman from service to be null and void

and further directing that the workman shall be deemed to be in service with all consequential benefits.

3. The workman was employed as a Senior Assistant in CCIL in 1996 and was posted at the ICD, Tuglakabad. On 18<sup>th</sup> August 1998 the workman was arrested in a criminal complaint filed by the State Bank of India ('SBI'), Parliament Street Branch and remained in judicial custody till 5<sup>th</sup> September 1998. On 29<sup>th</sup> September 1998 the workman submitted a leave application for grant of earned leave for the period from 19<sup>th</sup> August to 9<sup>th</sup> September 1998. By letter dated 24<sup>th</sup> December 1998 the Station House Officer of Police Station Parliament Street informed the Chief General Manager of CCIL about the arrest of the workman in FIR No. 356 of 1998 and of the fact that he remained in police custody for two days, and in judicial custody for seventeen days. According to the Petitioner the FIR also showed that the workman had been engaged in part-time employment with some other employer even while he was in full time employment with CCIL. On the charges of absconding from duty, suppressing the fact of his arrest and engaging in a part-time job with another employer the workman was placed under suspension from 13<sup>th</sup> January 1999. He was served with a chargesheet on 25<sup>th</sup> February 1999. The enquiry officer ('EO') submitted a report dated 30<sup>th</sup> May 2000 holding three of the four charges against the workman to be proved. The Disciplinary Authority ('DA') agreed with the finding of the EO and by an order dated 12<sup>th</sup> July 2000 the workman was removed from service. The appeal filed by the workman was disposed of by the Appellate Authority ('AA') by an order dated 13<sup>th</sup> September 2000 with a direction to the EO to hold a *de novo* enquiry after "obtaining authenticated/certified/attested copies of the FIR, arrest memo and other relevant documents officially and exhibiting the same as additional relied upon documents." The order of removal was directed to be kept in abeyance.

4. The EO after recording additional evidence again submitted a report dated 23<sup>rd</sup> March 2001. The AA accepted the workman's objection against the said report and again by an order dated 24<sup>th</sup> July 2001 set aside the order of removal from service and directed the holding of *de novo* enquiry. On 20<sup>th</sup> July 2002 CCIL transferred the Respondent workman to ICD, Dhandori Kalan, District Ludhiana.

5. By a report dated 20<sup>th</sup> November 2002 the EO found charges 2 and 3, i.e., the charge of the workman remaining unauthorisedly absent upto 9<sup>th</sup> September 1998, and

concealing the fact of his arrest by misrepresenting the purpose of leave as personal, to be proved. However, the EO held charge No. 1 (that the workman absconded on 18<sup>th</sup> August 1998 after marking his appointment in pre-shift) and charge No. 4 (that he was engaged in part-time job with another employer while being in full time employment with the CCIL) to be not proved. After giving the workman an opportunity of being heard, the DA by an order dated 26<sup>th</sup> March 2004 held charges 3 and 4 to be proved and imposed the punishment of removal from service. By an order dated 29<sup>th</sup> June 2004 the AA dismissed the workman's appeal and upheld the order dated 26<sup>th</sup> March 2004 passed by the DA removing him from service.

6. As on the date when the workman was removed from service, i.e., 26<sup>th</sup> March 2004, there were three industrial disputes involving CCIL and its workmen which were pending before the CGIT and the State Industrial Tribunal ('Tribunal') at Delhi. These were:

(i) ID No. 160 of 1999 in which the dispute referred to the CGIT for adjudication was:

“Whether the action of the management of Container Corporation of India Ltd., Ashoka Road, New Delhi in not giving to its Employees any incentives for family planning for promotion small family norms of the Govt. is justified? If not to what relief and benefits the employees are entitled to?”

(ii) ID No. 22 of 2002, espoused by 74 named workmen (excluding the Respondent workman), in which the dispute referred to the Tribunal for adjudication was:

“Whether the workmen shown in Annexure-A are entitled for ex-gratia payment of Rs. 6,000/- and if so, what directions are necessary in this respect.”

(iii) ID No. 23 of 2002 pending before the Tribunal, again involving certain named workmen (excluding the Respondent workman) in which the dispute referred for adjudication was:

“Whether the workmen whose names appear in Annexure A were on strike during the period from 07.12.1998 to 15.12.1998 or the management has restored to lock out and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/government notifications and to what other relief are they entitled and what directions are necessary in this respect?”

7. According to CCIL since the Respondent workman had not applied for availing the incentive for family planning and did not claim to fulfil the eligibility criteria, he was considered to be not “a concerned workman” in I.D. No. 160 of 1999. CCIL claimed that it took a conscious decision that the Respondent was a concerned workman only for the purpose of I.D. Nos. 22 of 2002 and not I.D. No. 23 of 2002 or I.D. No. 160 of 1999. Accordingly, on 26<sup>th</sup> March 2004 CCIL paid the Respondent workman one month’s salary in terms of Section 33(2)(b) ID Act and also filed an application being O.P. No. 15 of 2004 before the Tribunal seeking approval of CCIL’s action of removing the Respondent workman from service by order dated 26<sup>th</sup> March 2004. By an order dated 7<sup>th</sup> July 2004 the Tribunal dismissed O.P. No.15 of 2004. The Tribunal observed that the dispute referred to it for adjudication concerned 74 persons of whom the Respondent workman was not one. The Tribunal observed that there was no averment in O.P. No. 15 of 2004 that the Respondent workman was concerned with I.D. No. 22 of 2002.

8. Aggrieved by the Tribunal’s order dated 7<sup>th</sup> July 2004, CCIL filed Writ Petition (Civil) No. 12602 of 2004 in this Court. The said writ petition came to be allowed by an order dated 2<sup>nd</sup> December 2004. This Court was of the view that the question whether the Respondent was a ‘workman concerned’ for the purposes of Section 33(2)(b) ID Act could be gone into by the Tribunal “only after inviting reply on facts and if necessary permitting the parties to lead evidence may be even by framing a preliminary issue.” This Court noted the stand of the Respondent workman that he was not a concerned workman in I.D. Nos. 22 and 23 of 2002 while in ID No. 160 of 1999 he had conceded that he was a party. This Court nevertheless was of the opinion that the Tribunal ought to have granted opportunity to the parties “to lead evidence after permitting them to complete their pleadings and then passed appropriate orders.” Accordingly, the order dated 7<sup>th</sup> July 2004 of the Tribunal was set aside and O.P. No. 15 of 2004 by CCIL under Section 33(2)(b) ID Act was remanded to the Tribunal for expeditious disposal after framing a preliminary issue with regard to its maintainability.

9. In the meanwhile, I.D. No. 160 of 1999 came to be disposed of by the CGIT on 4<sup>th</sup> January 2006 by a “No dispute Award”, after recording the statement of a person claiming to be the President of the employees’ Union, as under:

“the scheme with regard to incentive for the small family norms was already in existence and being implemented and the workmen were satisfied with the existence and implementation of the said scheme and

both of them state that no dispute was in existence and remains between the parties and press for passing the award in terms of their statement.”

10. It may be mentioned here that on 21<sup>st</sup> February 2006 an application was filed by one Shri Suresh Kumar Ranga claiming to be the General Secretary of the Employees’ Union of the CCIL praying for recall of the order dated 4<sup>th</sup> January 2006 and restoration of I.D. No. 160 of 1999. The allegation in the said application was that the person who had claimed himself to be the President of the employees’ Union and made a statement before the CGIT on 4<sup>th</sup> January 2006 was not authorized to do so and was in fact not even an ordinary member of the Employees’ Union. The said application, however, was not disposed of by the CGIT till 16<sup>th</sup> May 2011 on which date it was dismissed. Against the said order dated 16<sup>th</sup> May 2011 of the CGIT there were two writ petitions filed, i.e., Writ Petition (Civil) Nos. 3728 and 3974 of 2011 by the workmen, which are stated to be pending as of date in this Court.

11. On 2<sup>nd</sup> March 2006 the Tribunal passed an order rejecting CCIL’s application O.P. No. 15 of 2004 under Section 33(2)(b) ID Act on the ground that it was not maintainable. It was held not to fulfill the essential condition for the maintainability of the said application. It was held that the Respondent workman was not a ‘workman concerned’ in I.D. No. 22 of 2002. In para 22 of the said order dated 2<sup>nd</sup> March 2006, the Tribunal noted that both CCIL and the Respondent workman had admitted that the workman was not concerned in I.D. No. 22 of 2002. The Tribunal also noted the contention of the Respondent workman that he was a concerned workman in I.D. No. 160 of 1999 pending before the CGIT.

12. The above order dated 2<sup>nd</sup> March 2006 passed by the Tribunal was not challenged by CCIL and accordingly attained finality.

13. After the dismissal of O.P. No. 15 of 2004 by the Tribunal on 2<sup>nd</sup> March 2006, the workman reported for duty on 3<sup>rd</sup> March 2006. According to him the management refused to permit him to resume duties. The workman then filed Writ Petition (Civil) No. 5316 of 2006 in this Court praying for a mandamus to CCIL to take him back on duty on the strength of the judgment of the Constitution Bench of the Supreme Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma AIR 2002 SC 643* (hereafter ‘the *Jaipur Zila Sahakari* case’). By a decision dated 2<sup>nd</sup> November

2006 a learned Single Judge of this Court dismissed the said writ petition. The workman filed LPA No. 2261 of 2006 which was dismissed by an order dated 4<sup>th</sup> April 2007 by observing that the workman could avail of the remedies available to him under the ID Act.

14. Thereafter, in November 2008 the workman filed LCA No. 11 of 2008 in the CGIT under Section 33A of the ID Act. In reply to the said application CCIL, *inter alia*, contended that on the date of filing of the said application under Section 33A of the ID Act, the reference in I.D. No. 160 of 1999 already stood disposed of. On 3<sup>rd</sup> June 2010 the CGIT framed the following issues:

- “(1) Whether Mr. Sanjeev Kumar application is concerned workman or not in ID No. 160/1999. OPBP.
- (2) Relief.”

15. On 6<sup>th</sup> December 2010 the following additional issue was framed:

- “If issue No. 1 framed on 03.06.2010 is answered in affirmative, whether the respondent management has contravened Section 33 of the ID Act, 1947 or not?”

16. The workman examined himself as WW1 and filed a detailed affidavit by way of evidence. He also examined Ranjeev Kumar as WW2, Binay Kumar Choudhary as WW3 and Suresh Kumar Ranga as WW4. CCIL examined Shri Rajeev Bhardwaj, its Group General Manager (HR) as MW1. He filed his affidavit by way of evidence. All the witnesses were cross-examined.

17. It was held by the CGIT in the impugned order dated 27<sup>th</sup> July 2011 that I.D. No. 160 of 1999 was pending when the order dated 26<sup>th</sup> March 2004 was passed by CCIL removing the workman from service. The workman was a ‘workman concerned’ in I.D. No. 160 of 1999 since an Award in the said dispute was capable of directly affecting the workman favourably or prejudicially depending upon the result. The CGIT observed: “A workman who is likely to benefit or get adversely affected by any decision will be a ‘workman concerned’ in such dispute.” Relying on the decision of the Supreme Court in the *Jaipur Zila Sahakari* case, the CGIT answered the issues framed against CCIL and held that the order dated 26<sup>th</sup> March 2004 removing the workman from service was null and void and that the workman should be deemed to be in service entitling him to all the consequential benefits.

***Submissions of counsel***

18. Mr. A.S. Chandhiok, learned Additional Solicitor General ('ASG') appearing on behalf of CCIL submitted as under:

(i) The Respondent was not a workman concerned in I.D. No. 160 of 1999 since he had never applied for the incentive scheme for family planning and in any event was not eligible for any such entitlement. Without deciding the said issue the CGIT could not have concluded that the Respondent was a workman concerned for the purposes of Section 33(2)(b) ID Act.

(ii) In any event, as on date the CGIT decided the workman's application under Section 33A ID Act, the reference in ID No. 160 of 1999 was not pending. Consequently at the highest, the CGIT could have given a declaration that the order dated 26<sup>th</sup> March 2004 removing the Respondent workman from service remained inoperative from that date till 2<sup>nd</sup> March 2006. Consequently the CGIT could have directed, at the highest, the arrears of back wages to be paid to the workman for the said period. According to Mr. Chandhiok the removal order could not be itself declared to be null and void. He placed reliance upon the decision of the Supreme Court in ***Tata Iron and Steel Co. Ltd. v. S.N. Modak AIR 1966 SC 380***. He submitted that the order of removal in the instant case did not become void *ab initio* but remained inoperative only till such time that the reference in I.D. No. 160 of 1999 was pending. The decision in ***Jaipur Zila Sahakari*** case approved the decision of the Supreme Court in ***Tata Iron and Steel Co. Ltd. v. S.N. Modak***. Consequently, the CGIT could not have granted the relief of reinstatement with all consequential benefits.

(iii) The essential ingredient for maintaining an application under Section 33A ID Act was that the workman has to show contravention of Section 33 ID Act by the employer. On the date that the application under Section 33A ID Act was filed by the workman, i.e., in November 2008, the reference in I.D. No. 160 of 1999 was not pending. Therefore, there is no question of there being any violation of Section 33 ID Act by the CCIL.

19. Mr. Atul T.N., learned counsel for the Respondent submits that the fact remains that

CCIL has never made an application under Section 33(2)(b) ID Act to the CGIT, before which I.D. No. 160 of 1999 was pending, seeking approval of its action in removing the Respondent workman by the order dated 26<sup>th</sup> March 2004. This failure to obtain approval from the CGIT under Section 33(2)(b) ID Act was sufficient to render the order of removal null and void. He relied upon the decision in *Jaipur Zila Sahakari* case which was further explained by the Supreme Court in *Indian Telephone Industries Ltd. v. Prabhakar H. Manjare AIR 2003 SC 195*. He also relied upon the decision of the Division Bench of this Court in *Delhi Transport Corporation v. Prem Chand 2011 (176) DLT 476, Satyabrata Goswami v. Presiding Officer, Industrial Tribunal 2008 Lab IC 332, Management of Hindustan Paper v. Presiding Officer, Industrial Tribunal 2007 1 GLR 232, Delhi Transport Corporation v. Sudan Pal* (decision dated 18<sup>th</sup> April 2011 in Writ Petition (Civil) No. 10800 of 2005) and *Rodhee v. GNCTD 2003 Lab IC 2243*. He also referred to the decision in *Desein Pvt. Ltd. v. Industrial Tribunal-III 109 (2004) DLT 18, M/s New India Motors (P.) Ltd. v. K.T. Morris AIR 1960 SC 875* and *Workmen of M/s Williamson Magor and Co. Ltd. v. M/s. Williamson Magor & Co. Ltd. AIR 1982 SC 78*.

#### ***Analysis of relevant provisions***

20. In order to appreciate the above submissions a reference may be first made to the relevant portions of Sections 33 and 33A ID Act which read 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 workman 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 standing orders applicable to a workman concerned in such dispute or, where there are no such standing order,

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 of 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.

**33A. 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, 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.”

21. It is plain that for the purposes of Section 33A ID Act the workman has to show that the employer has contravened Section 33 ID Act “during the pendency of proceedings” before the Tribunal. The proviso to Section 33(2)(b) ID Act states that when there is an industrial dispute pending before the Tribunal or the CGIT the employer can discharge or punish, whether by dismissal or otherwise, “a workman concerned in such dispute” for any misconduct not connected with such dispute but subject to fulfilment of two conditions. The first is that he should be paid wages for one month and the second is that the employer should make an application to the Tribunal for approval of the action taken by the employer.

22. The mandatory nature of the proviso to Section 33(2)(b) has been emphasised by the Supreme Court in *Jaipur Zila Sahakari* case. The said decision by a five-Judge Bench of the Supreme Court was necessitated because of an apparent conflict in certain earlier

decisions - *Punjab Beverages Pvt. Ltd. v. Suresh Chand* on the one hand and *Strawboard Manufacturing Co. v. Gobind* and *Tata Iron and Steel Co. Ltd. v. S.N. Modak* on the other - which required reconciliation. One question addressed by the five-Judge Bench in *Jaipur Zila Sahakari* case was whether the contravention of Section 33 would render the order of dismissal void or inoperative or, upon finding there is breach of Section 33(2) by an employer whether it would remain open to the Tribunal to examine the justification of the dismissal on merits. In *Jaipur Zila Sahakari* the Supreme Court held as under: (Lab IC @ pp 518-520)

“13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to

make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b), proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.

16. Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33A to challenge the approval granted, it cannot be said that the order of discharge or dismissal not become inoperative or invalid unless set aside under Section 33A. There is nothing in Section 31, 33 and 33A to suggest otherwise even reading them together in the context. These Sections are intended to serve different purposes.

17. As already noticed above, the Constitution Bench of this Court in *P.H. Kalyani v. Air France Calcutta* has referred to *Strawboard Manufacturing Co. v. Gobind* and approved the view taken in the said decision as regards the requirements of the proviso to Section 33(2)(b). Unfortunately in *Punjab Beverages Pvt. Ltd. v. Suresh Chand*, the earlier two cases of *Strawboard and Tata Iron & Steel Co.* were not noticed touching the question. It is true that in *S. Ganapathi and Ors. v. Air India and Anr.*, there is no reference to Punjab Beverages. But the view taken in two earlier decisions of *Strawboard* and *Tata Iron & Steel Co.* is followed on the question and rightly so in our opinion.

18. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of *Strawboard* and *Tata Iron & Steel Co.* and further state that the view expressed in *Punjab Beverages* on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly.”

23. The decision in *Jaipur Zila Sahakari* conclusively holds that compliance with the proviso of Section 33 ID Act by the employer is mandatory. In other words, where an industrial dispute with which a workman is concerned is pending and the employer

removes the workman from service and fails to seek the approval of the Tribunal before which such dispute is pending, the order of removal would be rendered void and inoperative. It has been emphasised that “if approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available.” The Supreme Court further explained that there is no need “of a separate or specific order for his reinstatement.”

***The decision in the Tata Iron and Steel Co. case***

24. At this stage, it is necessary to note what was held in ***Tata Iron and Steel Co. Ltd. v. S.N. Modak***. The facts of the said case reveal that on the date of termination of the workman, i.e., 17<sup>th</sup> December 1960, there were two disputes pending in the Industrial Tribunal concerning the workmen and the management. In order to seek approval of the order of termination the management applied to the Tribunal under Section 33(2)(b) ID Act. By the time the application came to be argued before the Tribunal the said two industrial disputes were decided by the Tribunal and Awards were passed. The Supreme Court did not accept the argument “that a proceeding which validly commences by way of an application made by the employer under S. 33(2)(b) should automatically come to an end because the main dispute has in the meanwhile been decided.” It underscored the legislative intent “that the proceedings which begin with an application properly made under S. 33(2) must run their own course and must be dealt with in accordance with law.” Further, the complaint under Section 33A ID Act was to be treated as an independent industrial proceeding and tried “as if it was an industrial dispute referred to the Tribunal under Section 10 of the Act.”

25. Learned ASG however laid considerable emphasis on the observations in para 11 of the decision in ***Tata Iron and Steel Co. Ltd. v. S.N. Modak*** to the following effect:

“It cannot be denied that with the final determination of the main dispute between the parties, the employer's right to terminate the services of the respondent according to the terms of service revives and the ban imposed on the exercise of the said power is lifted. But it cannot be overlooked that for the period between the date on which the appellant passed its order in question against the respondent, and the date when the ban was lifted by the final determination of the main dispute, the order cannot be said to be valid unless it receives the approval of the Tribunal. In other words, the order being incomplete and inchoate until the approval is obtained, cannot effectively terminate the relationship of the employer and the employee

between the appellant and the respondent; and so, even if the main industrial dispute is finally decided, the question about the validity of the order would still have to be tried and if the approval is not accorded by the Tribunal, the employer would be bound to treat the respondent as its employee and pay him full wages for the period even though the appellant may subsequently proceed to terminate the respondent's services. Therefore, the argument that the proceedings, if continued beyond the date of the final decision of the main industrial dispute, would become futile and meaningless, cannot be accepted.”

26. It was sought to be contended that in view of the above observations, the order of termination of service does not become void but is merely rendered inoperative for the period between the date on which it was issued and the date when the main industrial dispute was decided. On the contrary, the above observations appear to emphasise that even if the main industrial dispute is disposed of by the time the application under Section 33(2)(b) ID Act is heard, the question of validity of the order of termination will nevertheless have to be decided and “if the approval is not accorded by the Tribunal, the employer would be bound to treat the respondent as its employee and pay him full wages for the period.”

27. In any event, in the present case CCIL never approached the CGIT before whom I.D. No. 160 of 1999 was pending to seek approval under Section 33(2)(b) ID Act for its action in removing the Respondent from service by the order dated 26<sup>th</sup> March 2004. With that step having not been taken, CCIL cannot obviously take advantage of any of the observations of the Supreme Court in *Tata Iron and Steel Co. Ltd.* case where in fact the management had made such an application and it was held that the mere fact that the reference itself did not survive by the time the application under Section 33(2)(b) was taken up finally by the Tribunal, would not render the proceedings in such application infructuous.

28. Consequently, there is no merit in the contention of learned ASG that the CGIT could have, at the highest, only awarded the workman back wages for the period between 26<sup>th</sup> March 2004 and 2<sup>nd</sup> March 2006 and no other relief. There is also no merit in the contention that the removal order could not be held to be void *ab initio* but only ineffective and inoperative on account of the CCIL not seeking approval under Section 33(2)(b) ID Act. The Supreme Court in *Indian Telephone Industries Ltd.* has held that an employer would not be entitled to make a second application seeking approval and

that too without paying the full wages. It was emphasized that absent the employer obtaining approval under Section 33(2)(b) ID Act, the order of dismissal becomes void and inoperative and the workman would be entitled to full back wages as if he was never removed from service. CCIL cannot, in the instant case, plead that it was not aware of the correct legal position as regards the precise industrial dispute in regard to which the Respondent was the concerned workman. Yet, it chose not to seek approval of the order of his removal by making an application in that dispute, i.e., I.D. No.160 of 1999. This is what the Supreme Court disapproved of in the *Jaipur Zila Sahakari* case when it observed that where “an employer by design” avoids making an application after dismissing or discharging an employee, he cannot take “a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b), proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1).” The Supreme Court emphasised that “such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.”

29. The impugned order of the CGIT correctly applied the decision of the Supreme Court in the *Jaipur Zila Sahakari* case to hold that the order dated 26<sup>th</sup> March 2004 passed by CCIL removing the Respondent from service was rendered void and inoperative on account of failure of CCIL to obtain approval from the CGIT under Section 33(2)(b) of the ID Act.

***Respondent is a workman concerned in ID No. 160 of 1999***

30. The submission of learned ASG that the Respondent was not a ‘concerned workman’ in I.D. No. 160 of 1999 is also without merit. It has been explained in the *Jaipur Zila Sahakari* case that once the Tribunal finds that the employer has contravened the proviso to Section 33(2)(b) ID Act, the question of examining as to whether the employee’s discharge or dismissed is, on merits, justified does not arise at all. In the instant case, while deciding the workman’s application under Section 33A ID Act the CGIT was not required to decide whether the claim in I.D. No. 160 of 1999 was justified or not. In other words, it was not necessary for the CGIT to decide whether in fact the Respondent was entitled to the incentives for family planning. The Respondent

admittedly was a regular workman and I.D. No. 160 of 1999 concerned all regular workmen. For the purposes of Section 33A all that CGIT had to determine was whether on the date of the removal of the workman, an industrial dispute with which the workman was concerned was pending before the CGIT. If that question was answered in the affirmative, then the consequences of the failure of the employer, CCIL, to comply with the mandatory requirement of the proviso to Section 33(2)(b) ID Act had to necessarily follow.

31. For the aforementioned reasons, this Court is unable to find any error having been committed by the CGIT in the impugned order dated 27<sup>th</sup> July 2011. The writ petition is accordingly dismissed, but in the circumstances, with no order as to costs. The pending application is also dismissed.

**OCTOBER 10, 2011**  
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**S. MURALIDHAR, J.**