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

+ LPA 873/2011

GYAN CHAND & ORS

..... Appellants

Through: Mr. H.K. Chaturvedi, Adv.

versus

MANAGEMENT OF INDITRAVEL PVT LTD

..... Respondent

Through: Mr. Vinay Bhasin, Sr. Adv. with Mr.
H.L. Raina, Adv. for R-1.

AND

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+ LPA 874/2011

RAJINDER KUMAR & ORS

..... Appellants

Through: Mr. H.K. Chaturvedi, Adv.

versus

MANAGEMENT OF INDITRAVEL PVT LTD

..... Respondent

Through: Mr. Vinay Bhasin, Sr. Adv. with Mr.
H.L. Raina, Adv. for R-1.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.10.2011

1. One New Delhi General Mazdoor Union had raised an industrial dispute making certain financial demands including wage settlement etc. by approaching the Conciliation Officer in the Labour Department of the Govt. of NCT of Delhi. These disputes were referred for adjudication to the

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Industrial Tribunal and were registered as ID No.56 of 1988. The respondent Management contested on various grounds. The validity of reference was also challenged on the following grounds:-

- a. a long term wage settlement dated 2nd November, 1987 already existed between the workmen employed at the printing division of the respondent management at Noida and the respondent Management and which settlement was valid and operative till 30th September, 1990 and during the validity of said settlement it was not open to the workmen/union to raise any dispute which was covered by the said settlement; and,
- b. the printing division in which the workmen were employed was at Noida and Govt. of NCT of Delhi was not the "appropriate government" which could refer the dispute.

In fact, immediately after the reference was made, the respondent Management had challenged the reference by filing a writ petition which was disposed of with the direction that respondent Management could take all pleas before the Industrial Tribunal in the pending references.

2. While the aforesaid references/industrial disputes were pending, some of the workmen including the appellants herein went on strike. The respondent Management held the said strike illegal and charge sheeted some of the workmen including the appellants. After holding the inquiry in which charges were proved, the appellants were dismissed from service.

3. The appellants filed a complaint under Section 33A of the Industrial Disputes Act, 1947 (ID Act) because of pendency of the aforesaid industrial dispute which was registered as I.D.No.10 of 1989. It was *inter alia* contended by the appellants that their services could not have been terminated without taking prior approval of the Industrial Court where the wage dispute was pending as the appellants were 'protected workmen' within the meaning of Section 33(3) of the ID Act.

4. The Industrial Tribunal took up the complaint along with the industrial dispute and rendered common award dated 30th September, 1996. The Tribunal set aside the objection of the respondent Management that the Delhi Government was not competent to refer the matter and held that the reference was valid. Thereafter it discussed the terms of reference on merits; though it was held that the settlement dated 2nd November, 1987 between the workmen employed at the printing division at Noida and the respondent

Management was fair and reasonable and binding on the workmen for the purposes of DA & HRA, it was held that in so far as the settlement qua wages is concerned, the settlement was not binding on the New Delhi General Mazdoor union because it was not a party to the settlement. The Industrial Tribunal also decided the complaint filed by the appellants under Section 33A of the I.D. Act holding the same to be maintainable as the industrial dispute was pending and during the pendency of the said dispute the complaint was filed. The Tribunal accordingly came to the conclusion that there was a contravention of Section 33 of the ID Act as prior permission of the Tribunal was not taken before terminating the services of the appellants. On this basis, the Tribunal passed order in the said complaint directing reinstatement of the appellants with 50% back wages.

5. Challenging the award dated 30th September, 1996 in ID No.56 of 1988 and ID No.10 of 1989, the respondent Management filed writ petitions. These petitions had been allowed by the learned Single Judge vide impugned judgment dated 17th August, 2011. Sequentially, learned Single Judge has proceeded by first deciding the issue of jurisdiction and holding that the Delhi Government was not an appropriate government to refer the industrial dispute as the printing division where the workmen were

employed was at Noida. However the learned Single Judge has not restricted his decision on this ground alone, he examined the validity of the award in ID No.56 of 1988 on merits also. The learned Single Judge took note of the fact that the Tribunal had itself come to a finding that settlement dated 2nd November, 1987 which was still subsisting was fair and reasonable and binding on the workmen for the purposes of DA and HRA. On that basis, the learned Single Judge has held that the finding of the Tribunal that it is not binding qua other demands is clearly inconsistent and contradictory.

Following observations are made in this behalf:-

“24. Since both on the issue of territorial jurisdiction and the binding nature of the settlement the reference to the Tribunal was invalid, the question of violation of Section 33 (2) (b) of the ID Act by the management in not seeking approval of the Tribunal for its action of dismissing the ten workmen would not arise. Since this Court has found that the reference itself is bad in law, the consequence is that no application under Section 33A of the ID Act could have been filed by the workmen complaining of violation of Section 33 (2) (b) of the ID Act by the management. As a result, the impugned orders of the Tribunal allowing the applications under Section 33A and directing reinstatement of workmen with 50% back wages are unsustainable in law and are hereby set aside. The Award is also hereby set aside.”

6. We are quite in agreement with the aforesaid view taken by the learned Single Judge.

7. Once we proceed on the premise that there was a subsisting settlement dated 2nd November, 1987 it will bind all the workmen including those whose cause was espoused by New Delhi General Mazdoor Union which had raised the industrial dispute, it would lead to the conclusion that there was no dispute between the parties which could have been referred for adjudication and the preliminary submission of the respondent Management in this respect stands vindicated. On that basis, the reference has to be held to be bad in law and has been rightly set aside.

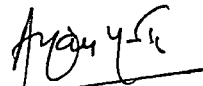
8. In view thereof, the learned Single Judge has further rightly observed that the question of violation of Section 33(2)(b) of the ID Act thereby mandating the respondent Management to seek approval of the Tribunal before its action of dismissing the appellants would not arise and in such circumstance the only course which was open to the appellants was to raise an industrial dispute under Section 10 of the Act.

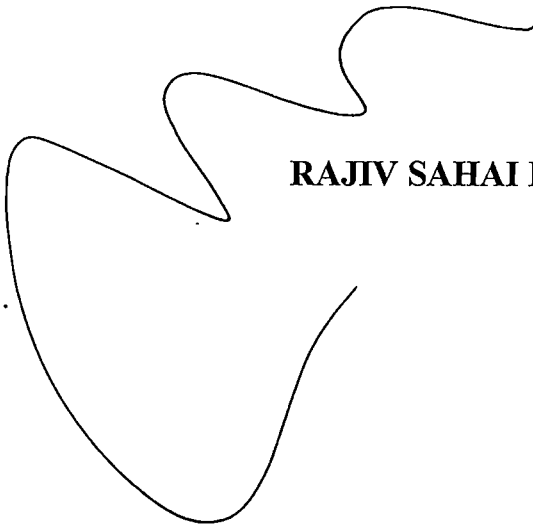
9. We thus do not find any merit in this appeal; it is accordingly dismissed.

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CM No.19397/2011 (for exemption) in LPA 873/2011 & CM
No.19398/2011 (for exemption) in LPA 874/2011.

Allowed, subject to just exceptions.


ACTING CHIEF JUSTICE


RAJIV SAHAI ENDLAW, J

OCTOBER 20, 2011/pp..