

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

+ **W.P.(C) 8578/2007 and CM APPL Nos. 16178/2007, 6591/2011
and Crl. M.A. Nos. 1310/2012**

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Reserved on: 27th July, 2012
Decided on: 31st August, 2012

MANAGEMENT OF BATRA
HOSPITAL & MEDICAL RESEARCH
CENTRE

..... Petitioner

Through: Mr. A.K. Singla, Sr. Advocate with
Mr. Mridul Gupta and Mr. Gautam
Anand, Advocates.

versus

GOVT. OF N.C.T. OF DELHI & ANR.

..... Respondents

Through: Mr. Ashwini K. Sakhuja, Advocate
for Respondent No.2.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioner impugns the award dated 12th April, 2007 disposing of the complaint of Respondent No.2/ workman under Section 33A of the Industrial Dispute Act (in short ID Act), setting aside the dismissal of the Respondent No.2/ workman on 31st August, 2005 by the Management during the pendency of ID No. 68/2005 without taking the permission of the Court and directing the management to reinstate the workman with effect from 31st August, 2005 with continuity of service and full back wages. The management was further directed to allow the workman to resume duties and also to pay arrears of back wages within one month of the passing of the award. The Petitioner has also challenged order

dated 27th September, 2005 passed by Respondent No.1 under Section 33(4) of the ID Act and Rule 61 of the Industrial Disputes (Central) Rules (in short the ID Rules) holding that Respondent No.2 is a protected workman for the year 2005-06 under Section 33(4) of the ID Act and 61 of the ID Rules.

2. Learned counsel for the Petitioner contends that the finding of the learned Tribunal that Respondent No.2 was a protected workman viz-a-viz his dismissal letter dated 31st August, 2005 is ex-facie illegal and against the record. The order dated 27th September, 2005 gives the status of protected workman to Respondent No.2 with effect from the date of order i.e. 27th September, 2005. This order being passed after the dismissal order dated 31st August, 2005 cannot have any application at the time when the dismissal was ordered. Finding of the learned Tribunal on the issue No.1 that the application under Section 33(A) of the ID Act was maintainable during the pendency of the approval application under Section 33(2)(b) is contrary to the law as laid down by the Hon'ble Supreme Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Shri Ram Gopal Sharma & Ors.* AIR 2002 SC 643 and *The Hindustan General Electrical Corporation Ltd. Vs. Bishwanath Prasad and Anr.* AIR 1971 SC 2417. The letter dated 1st March, 2005 relied upon to prove the issue No.2 merited no consideration as it was not in conformity with the provisions of Rule 61, as the same was not addressed by the Union connected with the establishment of the Petitioner, in view of the adjudications made by the Industrial Tribunal vide its award dated 3rd March, 2005. The letter dated 1st March, 2005 was filed prior to the period prescribed under Rule 61(1) of the ID Rules i.e. 1st April to 30th April of the year. Moreover, this letter dated 1st March, 2005 did not disclose or indicate

the addresses of the office bearers mentioned therein as mandated by Rule 61(1) of the ID Rules and thus the Petitioner/ management was not at all required to give any reply thereto. The order of the Assistant Labour Commissioner dated 27th September, 2005 was passed ex-parte and fails to deal with the objections taken by the management in its reply dated 18th July, 2005 challenging the description of the office bearers stated in the application, locus of the suspended employee to be an office bearer, effect of non-filing of the copy of the constitution of the Union, the union seeking declaration of Respondent No.2 as a protected workman who was not representing most of the workmen working in the establishment of the Petitioner. Further, there is no evidence of proof of delivery of the letter dated 1st March, 2005 on the file of the Assistant Labour Commissioner who passed the impugned order dated 27th September, 2005. Further, the letter dated 1st March, 2005 needed no reply as it was contrary to Rule 61(1) of the ID Rules and the award dated 3rd March, 2005 passed by the learned Industrial Tribunal. Respondent No.2 failed to produce records to substantiate his claim of being General Secretary of the Union. The order of the Assistant Labour Commissioner dated 27th September, 2005 is contrary to the law laid down by this Court in *Voltas Ltd. Vs. Voltas Employees' Union & Anr.* 136 (2007) DLT 450; *DTC Vs. DTC Workers Union Centre MANU/DE/9447/2006* and *Rodhee, Laxmi Prasad, Pardeep and Chhote Lal Vs. Govt. of Delhi & Ors.* (2003) II LLJ 5 Delhi. While awarding full back wages the learned Trial Court lost sight of the parameters laid down. Reliance is placed on *Kendriya Vidyalaya Sangathan and Anr. Vs. S.C. Sharma* (2005) 2 SCC 363; *North-East Karnataka Road Transport Corporation Vs. M. Nagangouda* AIR 2007 SC 973; *Metropolitan Transport*

Corporation Vs. V. Venkatesan AIR 2010 SC 206 and Niranjan Cinema Vs. Prakash Chandra Dubey & Anr. (2007) 14 SCC 349. It is prayed that the impugned award dated 12th April, 2007 and impugned order dated 27th September, 2005 of the Assistant Labour Commissioner be set aside.

3. Learned counsel for the Respondent on the other hand contends that the workman was protected on year-to-year basis and the same came into force on the date, the letter is sent by the Union in terms of Rules 61 of the ID Rules. Thus, when the Respondent No.2 was dismissed on 31st August, 2005 he was a protected workman irrespective of the order of the Assistant Labour Commissioner being passed on 27th September, 2005 which always has a retrospective effect. Reliance in this regard is placed on *Air India Ltd. Vs. Indian Pilots Guild & Anr. 2005 Lab I.C. 1286*. Respondent No.2 was denied his right of promotion as a result of which he raised an industrial dispute being ID No. 9/2003 wherein award was passed in favour of Respondent No.2 and against the Petitioner/ management holding that the Respondent No.2 was entitled to promotion. Thereafter, the Respondent workman was elected as an office bearer of the Batra Hospital Employees Union holding the post of either Vice-President or General Secretary. Since the Respondent No.2 had been elected as an office bearer, he was declared a protected workman under Rule 61 of the ID Central Rules for various years which fact was accepted by the management. The declaration of Respondent No.2 as a protected workman was challenged by the Petitioner/ management by filing a W.P.(C) No. 7748/2002 which petition was dismissed by this Hon'ble Court on 19th May, 2004, however, the appeal filed by the Petitioner/ management is still pending being LPA No. 743/2004. Vide

order dated 27th September, 2005 the Respondent No.2 was again declared a protected workman which order was to relate back to 1st April, 2005. To victimize Respondent No.2 and to remove him from service, an alleged charge-sheet was filed leveling false and frivolous allegations related to one Shri Pankaj Sharma the Law Officer (HR). In view of the fact that the Respondent No.2 was a protected workman, he filed a petition under Section 33(A) of the ID Act wherein the basic contention of the Petitioner was that Respondent No.2 was not a protected workman. Reliance is placed on *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Shri Ram Gopal Sharma & Ors.* AIR 2002 SC 643; *Batra Hospital & Medical Research Centre of Ch. Aishi Ram Batra Vs. Batra Hospital Employees Union & Ors.* 2004 (75) DRJ 328; and *Tops Security Ltd. Vs. Subhash Chander Jha LPA 1044/2011* decided by the Division Bench of this Court on 16th July, 2012. It is further contended that since there is no perversity in the impugned award and the order of the Assistant Labour Commissioner, this Court in view of the law laid down in *Harjinder Singh Vs. Punjab State Warehousing Corporation (2010) 1 SCR 591* should not interfere in the same in the exercise of its power under Article 226 of the Constitution.

4. I have heard learned counsel for the parties. The facts leading to filing of the present petition are that Respondent No.2 was employed as a Nursing Aid with the Petitioner. It is alleged that on account of indiscipline and misbehaviour with the superior officers, he was placed under suspension on 25th March, 2005. A charge-sheet was issued to him on 19th April, 2005. Respondent No.2 failed to respond to the charge-sheet and he was held guilty of misconduct which was delivered to him by registered post as well

as a public notice was issued in this regard. Finally he was dismissed from service on 31st August, 2005. The Respondent filed a complaint under Section 33(A) of the ID Act on which the impugned award dated 12th April, 2007 was passed declaring that the Respondent No.2 was entitled to claim the status of the protected workman for the year 2005-06 by virtue of order dated 27th September, 2005.

5. It may be noted that the Assistant Labour Commissioner vide its order dated 27th September, 2005 declared the Respondent No.2 as a protected workman under Section 33(4) of the ID Act and Rule 61 of the Central Rules. The thrust of the learned counsel for the Petitioner in relation to the order dated 27th September, 2005 is that it was enforceable with immediate effect. Since the said order was not applicable retrospectively thus as on the date when the dismissal order was passed there was no declaration in favour of the Respondent No.2 that he was a protected workman. Rule 61 of the Industrial Disputes (Central) Rules 1957 provides as under:

“61. Protected workmen.- (1) Every registered trade union connected with an industrial establishment, to which the Act applies, shall communicate to the employer before the 30th April every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within fifteen days of such change.

(2) The employer shall, subject to section 33, sub-section (4) recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union, in writing, within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen

recognised as protected workmen for the period of twelve months from the date of such communication.

(3) Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of protected workmen, admissible for the establishment, under section 33, sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen :

Provided that where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen allotted to it:

Provided further that where the number of protected workmen allotted to a union under this sub-rule falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within five days of the receipt of the employer's letter.

(4) When a dispute arises between an employer and any registered trade union in any matter connected with the recognition of "protected workmen" under this rule, the dispute shall be referred to the any Regional Labour Commissioner (Central) or Assistant Labour Commissioner (Central) concerned, whose decision thereon shall be final."

6. A perusal of Rule 61 thus shows that every trade Union connected with an industrial establishment has to communicate to the employer before 30th April, the names and addresses of such officers of the Union who are

employed in the establishment and who in the opinion of the Union should be recognized as “protected workmen” and any change therein has to be communicated within 15 days of such change. Thereafter it is mandatory on the part of the employer in terms of Section 33 Sub-Section 4 to recognize such workmen to be protected workmen for the purposes of Sub-Section 3 and communicate to the Union in writing within 15 days of the receipt of names and addresses under Sub-Rule 1, the list of such workers recognized as protected workmen for the period of 12 months from the date of such communications. As per sub-Rule 4 when a dispute arises between an employer and a registered trade Union in any matter connected with the recognition of the ‘protected workmen’ the decision of the Assistant Labour Commissioner in this regard shall be final. A perusal of the Rule shows that the date from which the workmen get recognition as protected workmen is the date of communication by the employer to the Union in writing as per Sub-Rule 2. However, in a case where the employer does not communicate to the Union about its recognizing the status of protected workmen the decision of the Assistant Labour Commissioner is final. I find no force in the argument of the learned counsel for the Petitioner that the order of the Assistant Labour Commissioner will not relate back to the date when the employer was to communicate the same i.e. 15 days merely because the order says that it has to come into force with immediate effect. A perusal of the Rule shows that it is a continuous process and the office bearers of the Union are given the status of protected workmen so that they can without any fear espouse the causes of the workmen. Their status cannot be kept in jeopardy merely because of the delay in the decision by the employer. In a case where the contention of the management is turned down and the

workman who is an office bearer is given the status of protected workman, it could relate back to the date when the employer was required to inform the same in law i.e. 1st April of every year. In the present case the letter was sent on 1st March, 2005 by Respondent No.2 seeking a declaration for him and 13 other office bearers as protected workmen for the period 2005-06. Thus the order dated 27th September, 2005 passed by the Assistant Labour Commissioner though states 'with immediate effect' which actually relate back to the date of application before the authority. This issue came up for consideration in *Air India Ltd. Vs. Indian Pilots Guild and Anr. 2005 Lab I.C. 1286* wherein it was held:

“15. On behalf of the petitioners their learned counsel contends that the services of Capt. Vikrant Sansare were terminated with effect from 9th August, 2004 and as such the application was not maintainable as Capt. Sansare was no longer in service. The communication to the management was on 19th January, 2004 and the application to respondent No. 2 was on 17th May, 2004. The subsequent termination would be of no consequence considering the date on which the protection has to be granted. The argument advanced if accepted would defeat the very concept of granting the status of protected workmen as any disciplinary action or act of termination arising from the acts arising from an industrial dispute, the protected workmen are not to suffer the consequences of their service being terminated without the permission of the Tribunal. If for some reason or other the status of protected workmen is not granted those for whom protection is sought, would never be entitled to protection when it is needed most, affecting the collective bargaining power and defeat the object as to why the section was introduced. Hence the contention must be rejected.

16. The last issue which remains is the issue as to from what date the protection is to be granted. Under rules, the protection is to be for one year from the date which the employer

communicates to the union the decision of granting the status of protected workmen. That has to be done within fifteen days of receipt of the application. In the instant case the petitioners did not communicate the decision. The respondent No. 1 thereafter raised a dispute by application dated 17th May, 2004. The order of 2nd respondent being of quasi-judicial nature it will have to relate back either to the period given for the management to communicate the decision or to the date of the application which is 17th May, 2004. To my mind considering the object for which the protection is given, the limited period for which the protection is given and the time within which the management must communicate its decision, the protection will have to relate back to the date of the application to respondent No. 1. That would be 17th May, 2004.”

7. Learned counsel for the Petitioner has laid emphasis on *Syed Yakoob Vs. K.S. Radhakrishnan & Ors. AIR 1964 SC 477* to contend that a writ of certiorari can be issued in regard to finding of fact recorded by the Tribunal if it is shown that in recording the said finding the Tribunal has erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced impugned finding. In the present case I am of the opinion that there is no error in the finding of fact much less an error of law in the findings arrived by the Tribunal that the Respondent No.2 held the status of a protected workman. Merely because the impugned order 27th September, 2005 uses the words, “this order is released today i.e. 27/9/2005 and it be enforced with immediate effect”, I find no infirmity in the impugned award holding that the Respondent No.2 was a “protected workman” and he could not be dismissed vide order dated 31st August, 2005 without seeking permission. Thus there is no infirmity in the impugned award even on this count.

8. The next issue which calls for consideration is whether the Respondent No.2 could have filed a complaint under Section 33A before the approval application was decided by the learned Tribunal. A perusal of the judgments herein after mentioned would show that the remedy under Section 33A available to the protected workmen is independent of the approval being granted by the concerned authority. In *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.* (supra) the Constitution Bench held:

“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.”

9. This Court while dealing with the issue of non-compliance of provisions of Section 33(2)(b) of the ID Act in *Top Securities Ltd.* (supra) came to the conclusion:

“11. A plain reading of Section 33(2) (b) would suggest that during the pendency of any proceeding in respect of an industrial dispute, the employer has been permitted under certain circumstances, to discharge or punish, whether by dismissal or otherwise, the workman with whom there is a pending dispute. However, there is a proviso attached to the same. The said proviso requires 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.

17. As mentioned above while these decisions do tend to support the arguments advanced by the learned counsel for the appellants, but that would be of no use to him in view of the fact that a Constitution Bench of the Supreme Court in the case of *Jaipur Z.S.B.V. Bank (Supra)*, has clearly held to the contrary.

In *Jaipur Z.S.B.V. Bank (Supra)*, the Supreme Court was considering the following question:-

“If the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947 whether the order of dismissal becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative?”

18. The above extract would reveal that there are essentially two questions rolled into one. The first question was with regard to the date from which the order of dismissal would become ineffective. Would it become ineffective from the date it was passed or from the date of non-approval of the order of dismissal. However, this question arises only in a situation where an approval which has been sought under Section 33(2)(b) of the said Act has not been granted or, to put it positively, has been rejected by the Tribunal. We are, however, concerned with the second question which deals with the issue of whether failure to make an application under Section 33(2)(b) would not render the order of dismissal inoperative? The Supreme Court has answered this question by holding that the failure to make an application under Section 33(2)(b) of the said Act would amount to non-compliance with the mandatory provisions of the said Act and that, by itself, would render the order of dismissal to be inoperative. In other words, if the mandatory conditions of Section 33(2)(b) of the said Act are contravened, while passing the order of the dismissal, the same would have no effect in law.

19. The scope of Section 33(2)(b) as well as Section 33A of the said Act has been discussed in detail by the Supreme Court in paragraph 14, 15 & 16. The same reads as under:-

“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.”

10. In view of the aforesaid discussion, I find no infirmity in the impugned award and the order dated 27th September, 2005. Petition and applications are dismissed accordingly.

(MUKTA GUPTA)
JUDGE

AUGUST 31, 2012
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