



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 4TH DAY OF MARCH, 2026
BEFORE
THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE
WRIT PETITION NO. 52081 OF 2017 (L-RES)

BETWEEN:

M/S HOTEL OBEROI
NO.39, M.G. ROAD,
BENGALURU-560 001.
REPRESENTED BY ITS HEAD HR

...PETITIONER

(BY SRI. K.N. VASUKI, ADVOCATE FOR
SRI. B C PRABHAKAR., ADVOCATE)

AND:

1. THE SECRETARY
LABOUR DEPARTMENT,
GOVERNMENT OF KARNATAKA,
VIKASA SOUDHA,
BENGALURU 560 001.
2. SRI. HARI H.S. KUMAR
NO.5248, SUNRISE SCHOOL ROAD,
SUBHASH MAGAR,
NELAMANGALA 562 123.

...RESPONDENTS

(BY SRI. LEELAKRISHNAN D &
SRI. G SANJAY, ADVOCATE FOR C/R2
SRI. M. RAJKUMAR, AGA FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO-CALL
FOR THE RECORDS LEADING TO THE PASSING OF THE
IMPUGNED ORDER DTD 10.10.2017, PASSED BY THE R-1 VIDE
ANNX-M. QUASH THE IMPUGNED ORDER DTD 10.10.2017,
PASSED BY THE R-1 VIDE ANNEX-M.



THIS PETITION, COMING ON FOR HEARING, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

ORAL ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for respondent No.1.

2. This petition is filed assailing the order dated 10.10.2017 marked at Annexure- M. In terms of the said order, respondent No.1 has allowed the application filed by respondent No.2 under Section 34 of the Industrial Disputes Act, 1947 (for short 'Act, 1947') and permitted respondent No.2 to prosecute the petitioner-Management for alleged violation of Sections 33(1)(b) and 33(2)(b) of the Act, 1947.

3. Learned counsel appearing for the petitioner would submit that respondent No.2 was dismissed from service on account of misconduct. Respondent No.2 raised a dispute under Section 10(4) of the Act, 1947 and same is pending consideration.



4. Respondent No.2 has raised a contention before the Labour Court, that while dismissing respondent No.2 from employment, mandatory requirement under Section 33(1)(b) and Section 33(2)(b) of the Act, 1947, are not followed, as such, the order of dismissal is untenable. Having raised a dispute, he has also moved an application under Section 34 of the Act, 1947, alleging violation.

5. Learned counsel appearing for the petitioner would submit that in a dispute under Section 10(4) of the Act, 1947, the petitioner before this Court, who is the second party Management in the proceeding, has raised a contention that there was no pending dispute as on the date of dismissal of respondent No.2. That being the position, the petitioner-Management took a stand that there was no need to file an application either under Section 33(1)(b) or Section 33(2)(b) of the Act, 1947.

6. It is further contented that, the matter is still pending adjudication before the Labour Court and the Labour Court has to give a finding as to whether the requirement of



Sections 33(1)(b) or 33(2)(b) of the Act, 1947 have been complied or not and unless that adjudication takes place, respondent No.1 could not have permitted respondent No.2 to prosecute the petitioner .

7. It is also urged that the employer may be *bonafide* carrying the impression that no permission or approval is required in a given set of facts of the case, and ultimately, employer may suffer an order at the hands of the Labour Court or Tribunal which would hold that the permission or approval was required, and in that situation, the petitioner- employer cannot be penalised for carrying a *bonafide* impression that the case is not covered either Sections 33(1)(b) or 33(2)(b) of the Act, 1947. And in such cases, the *mens rea* angle is missing and there cannot be any prosecution is the contention.

8. Learned Government Advocate would defend the order and would contend that respondent No.1 has taken into account all the relevant factors into consideration and since it is a requirement under law that before dismissing the



employee in a case falling under Sections 33(1)(b) or 33(2)(b) of the Act, 1947, there has to be a permission or approval, as the case may be, and same has not been obtained.

9. The learned counsel appearing for respondent No.2 would submit that in the impugned order, the Authority has recorded a finding that the Management has admitted that the dispute is pending before the Labour Court and no application was made to the authority either seeking approval or permission before dismissing the workman.

10. Thus, it is the contention of the learned counsel for the respondent No.2 that when there is an admission by the petitioner-Management relating to the pendency of a dispute, non-compliance of Sections 33(1)(b) or 33(2)(b) of the Act, 1947, the Authority is justified in passing the impugned order.

11. The learned counsel for the petitioner, by way of reply, would submit that there was no such admission and



the alleged admission is wrongly recorded in the impugned order.

12. The Court has considered the contentions raised at the Bar and perused the records.

13. The respondent was asked to point out as to where such admission relating to non-compliance of the requirement under Sections 33(1)(b) or 33(2)(b) of the Act, 1947 is made. However, no such admissions are pointed out.

14. In a case falling under Section 33(1)(b) of Act, 1947, the employer is required to obtain the permission before terminating the service of the employee. In a case falling under Section 33(2)(b), the employer is required to obtain the approval, and approval has to be obtained simultaneously while dismissing the employee. If these provisions are not complied, then it amounts to violation of Sections 33(1)(b) or 33(2)(b) of the Act, 1947, as the case may be.



15. However, the question whether the said provisions apply or not is pending adjudication before the Labour Court.

16. That being the position, in the facts of the present case, where the Authority has erroneously proceeded to hold that there is an admission relating to non-compliance of the requirements of Sections 33(1)(b) or 33(2)(b) of the Act, 1947, when there are no such admissions, the impugned order is not sustainable.

17. Respondent No.1 could not have passed an order under Section 34 of the Act, 1947 holding that there is an admission of violation of Sections 33(1)(b) or 33(2)(b) of the Act, 1947. The question relating to the violation has to be adjudicated by the jurisdictional Labour Court where the matter is pending consideration.

18. However, it is made clear that in the adjudication, if it is found that the provisions of the Act, 1947 namely either Section 33(1)(b) or Section 33(2)(b), is violated, then



respondent No.2 shall have the liberty to take such action as advised in law.

19. It is made clear that the observations made in this order should not be construed as having reflected on the merits of the dispute, which is pending before the Labour Court.

20. Hence the following:

ORDER

- (i) Writ Petition is ***allowed.***
- (ii) Impugned order dated 10.10.2017 marked at Annexure-M passed by respondent No.1 in LD 702 IDM 2016, is quashed.
- (iii) Liberty is reserved to respondent No.2 to take such action as advised in law, subsequent to the adjudication of the dispute pending before the Labour Court.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

GVP/RK