IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03rd DAY OF AUGUST, 2026

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BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO.12014 OF 2013 (L-KSRTC)

BETWEEN:

M.K. MOHAMMED ISMAIL
S/O. LATE M.ABDUL KHALEEL,
AGED ABOUT 57 YEARS,
R/AT NO.145, 9TH CROSS, SIDDIQUE NAGAR,
BANNIMANTAPA, B-LAYOUT, MYSORE.

…PETITIONER

(BY SRI. V.R. DOTAR, ADVOCATE FOR
SRI. L. SHEKAR, ADVOCATE)

AND:

THE DIVISIONAL CONTROLLER,
K.S.R.T.C., KOLAR DIVISION, KOLAR.

…RESPONDENT

(BY SMT. H.R. RENUKA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A) ISSUE A WRIT IN THE NATURE OF WRIT OF CERTIORARI QUASHING THE IMPUGNED AWARD DATED 13.11.2012 PASSED IN REF NO.43/2010 BY THE 2ND ADDITIONAL LABOUR COURT, VIDE ANNEXURE-A TO THE WRIT PETITION IN SO FAR AS IT RELATES TO DENIAL OF BACK WAGES & DENIAL OF FOUR ANNUAL INCREMENTS WITH CUMULATIVE EFFECT. B) ISSUE A WRIT IN THE NATURE OF MANDAMUS DIRECTING THIS RESPONDENT CORPORATION TO REINSTATE THE PETITIONER WITH CONTINUITY OF SERVICE, CONSEQUENTIAL BENEFITS AND FULL BACKWAGES FROM THE DATE OF DISMISSAL TILL THE DATE OF REINSTATEMENT UNDER THE FACTS & CIRCUMSTANCES OF THE CASE AND ETC.,.

Digitally signed by
CHANDRASHEKAR
LAXMAN KATTIMANI
Location: HIGH COURT
OF KARNATAKA
DHARWAD BENCH
DHARWAD

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.07.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

The petitioner who was working as a Conductor in KSRTC has questioned the part of the award passed by the Labour Court, denying wages from the date of dismissal till the date of reinstatement, and withholding 4 annual increments with cumulative effect, despite non-compliance of Section 33(2)(b) of the Industrial Disputes Act, 1947[1].

2. The Labour Court has set aside the penalty of dismissal on the ground that the respondent did not seek approval before dismissing the workman, as required under Section 33(2)(b) of the Act, 1947.

3. The Labour Court has held that the order of dismissal is *non est* in the eye of law and directed reinstatement. However, the Labour Court denied back wages for the period between the date of dismissal and reinstatement on the premise that the charges on misconduct are proved.

4. The respondent-employer has implemented the award by reinstating the petitioner.

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[1] the Act, 1947.

5. The petitioner contends that the award is in the teeth of the judgment of the Constitution Bench of the Apex Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others***[2]***.***

6. The petitioner has also raised a contention that in view of the judgment in ***Jaipur Zila,*** *supra*, the Tribunal could not have adjudicated upon the merits of the misconduct alleged.

7. In the context of the contentions raised, the following questions arise for consideration.

(i) *Whether the Labour Court can deny the back wages to a workman, from the date of penalty of dismissal from employment till the date of reinstatement, if the penalty of dismissal is set aside for non-compliance of requirement of Section 33(2)(b) of the Act, 1947?*

(ii) *Whether the Labour Court or Tribunal under the Industrial Disputes Act, 1947 has the jurisdiction to adjudicate on the merits of the misconduct alleged in a dispute raised under Section 10 of the Act,*

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[2] *(2002) 2 SCC 244*

1947, despite violation of Section 33(2)(b) of the Act, 1947?

*(iii) Whether the Apex Court in **Jaipur Zila,** has held that the **domestic enquiry held prior to the application under Section 33(2)(b) of the Act, 1947,** is non est in the eye of law.*

(iv) If the Labour Court or the Tribunal confirms the charges on misconduct and penalty of dismissal, despite dismissal of the application under Section 33(2)(b) of the Act, 1947, in a proceeding under Section 10 or 33A, whether the penalty of dismissal relates back to the date of original penalty of dismissal imposed by the employer?"

8. **Facts in brief:**

8.1 Petitioner was subjected to disciplinary enquiry alleging certain misconduct and the disciplinary authority dismissed the petitioner vide order dated 27.01.2007. The petitioner raised industrial dispute and the appropriate Government referred the matter to the Labour Court for the adjudication.

8.2 The Labour Court held that the domestic enquiry was fair and proper and permitted the parties to lead evidence regarding victimisation.

8.3 As noticed, the Labour Court held that the charges are proved, yet set aside the order of dismissal as approval for the order of dismissal was not obtained as required under Section 33(2)(b) of the Act, 1947. However, the Labour Court denied the back wages and also held that the charges of misconduct are proved and withheld 4 increments with cumulative effect.

9. Heard the learned Counsel Sri L.Shekar for the petitioner, and as the question raised is of seminal importance the Court also heard Sri.V.S. Naik, Sri.V.R.Datar and Sri.Narayan Swamy who supported Sri L. Shekar. On behalf of the respondent learned counsel Sri B.K.Prashanth represented Smt. Renuka.

The petitioner's contention.

10. The employer has not filed an application seeking approval for the order of dismissal and violated Section 33(2)(b) of the Act, 1947 and the denial of back wages from the date of dismissal till the date of reinstatement is

impermissible in view of the judgment of the Apex Court in ***Jaipur Zila,*** *supra*.

11. For non-compliance of Section 33(2)(b) of the Act, 1947 the entire proceeding is *void or non est* and the Labour Court does not have jurisdiction to get into the merits of the misconduct alleged.

12. The respondent-employer having not questioned the award directing reinstatement, cannot contend that the order of dismissal relates to the date of the original order. The employer cannot urge to deny the back wages on the premise that the charges are proved when the Court did not have the jurisdiction to get into the merits of the misconduct alleged.

13. Even otherwise, the finding regarding proof of the charges is erroneous and assuming that the charges are proved, the penalty of withholding 4 increments with cumulative effect is disproportionate to the misconduct alleged.

14. Learned counsel for the petitioner has placed reliance on the following judgments. For easy reference the summary of the ratio laid down in the judgments, applicable to the present case are also culled out in the chart below.

Sl. No.	Judgment	Coram	Ratio
1	Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma & Ors., **(2002) 2 SCC 244**	5	If approval under S.33 (2)(b) is not obtained (not sought, or sought and refused), the penalty of dismissal is *void ab initio* from the date it was passed, not merely from the date of refusal; the workman is deemed never to have been dismissed.
2	Straw Board Manufacturing Co. Ltd. v. Gobind, **AIR 1962 SC 1500**	3	Payment of wages and the application for approval need not necessarily precede dismissal — can be part of the same transaction; if approval is refused, the dismissal falls and the workman is deemed as never dismissed.
3	Punjab Beverages Pvt. Ltd., Chandigarh v. Suresh Chand & Anr., **(1978) 2 SCC 144**	3	Dismissal in contravention of S.33(2)(b) was only *voidable*, not void ab initio; Employee's S.33A complaint (if earlier in time) must be heard along with the employer's approval application.
4	Engineering Laghu Udyog Employees' Union v. Judge, Labour Court & Industrial Tribunal & Anr., **(2003) 12 SCC 1**	3	Applying the ratio in ***Jaipur Zila***, drew the jurisprudential distinction between a void order (which needs fresh resuscitation) and one that is merely defective and cured by subsequent approval.
5	Tata Iron & Steel Co. Ltd. v. S.N. Modak, **AIR 1966 SC 380**	3	The application seeking approval under Section 33(2)(b) does not become infructuous if the disputes pending before the Tribunal, which compelled the employer to file application seeking approval, are adjudicated on merits.

Respondent's contention.

15. The Labour court will continue to have the jurisdiction to try the industrial dispute relating to disciplinary enquiry and the penalty imposed, even if Section 33(2)(b) application is rejected. Merely because the application under Section 33(2)(b) of the Act, 1947 is not filed, the jurisdiction to adjudicate the industrial dispute emanating from disciplinary enquiry is not taken away.

16. The charges of misconduct are proved in a proceeding under Section 10 of the Act, 1947. Thus, the Labour Court has imposed the appropriate penalty.

17. The judgment of the five-judge Bench of the Apex Court in ***Jaipur Zila*** is *per incuriam* contrary to the earlier five-judge Bench judgment in ***P.H. Kalyani v. M/s. Air France, Calcutta,***[3] in so far as the answer to the second part of the reference - "*whether the failure to make application under Section 33(2)(b) of the Act would not render the order of dismissal inoperative?*" The said judgment is not a binding precedent.

18. Scope of enquiry under Section 33(2)(b) of the Act, 1947 is limited to ascertain as to whether the requirements

[3] *AIR 1963 SC 1756*

under Section 33(2)(b) of the Act, 1947 are not complied or not. Said provision does not deal with the merits of the misconduct alleged. The adjudication on the merits of the disciplinary enquiry and the penalty imposed has to be adjudicated in a dispute under Sections 10 or 33A of the Act, 1947.

19. Even in a situation where there is defective enquiry or no enquiry before imposing penalty of dismissal, the employer can establish the misconduct by leading evidence on the charges, thus the Labour Court will have the jurisdiction to adjudicate the industrial dispute.

20. Learned counsel for the respondent has placed reliance on the following judgments:

Sl. No	**Judgment**	**Coram**	**Ratio**
1	Automobile Products of India Ltd. v. Rukmaji Bala & Ors., **AIR 1955 SC 258**	3	The Tribunal's jurisdiction in a S.33-A complaint is not confined to a bare finding of contravention. Tribunal has the jurisdiction to go into the merits/justification of the dismissal.
2	Punjab National Bank Ltd. v. Its Workmen, **AIR 1960 SC 160**	3	Compliance with S.33 does not validate the order of termination and the domestic enquiry valid. It only removes the ban on dismissal and the original order of termination if disputed has to be adjudicated on merits. The authority under Section 33A can

			also adjudicate on the merits of the order of dismissal.
3	Tata Iron and Steel Co. Ltd. v. D.R. Singh **AIR 1966 SC 288**	3	Deals with the scope of Section 33(2)(b) jurisdiction: on compliance of Section 33(2)(b) requirements/ victimisation/unfair labour practice without weighing evidence deeply.
4	Management of Karur Vysya Bank Ltd. v. S. Balakrishnan, **(2016) 12 SCC 221**	2	Not seeking approval under Section 33(2)(b) will not prevent the employer from justifying the order of dismissal on merits. The Apex Court also held that observations in Paragraph No.14 of the judgment in ***Jaipur Zila*** had no application to the case.
5	J.H. Patel v. Nuboard Manufacturing Co. Ltd. **(2014) 11 SCC 371**	2	The Apex Court held that the employer's right to defend the charges on merits is not taken away in the event of non compliance of Section 33(2)(b). The Apex Court in paragraph No.11 held that the ***Jaipur Zila*** judgment is explained in that way in ***Rajasthan SRTC v. Satyaprakash.***
6	Managing Director, NEKRTC (Karnataka) v. Shivasharanappa, **(2017) 16 SCC 540**	3	The Apex Court followed the interpretation in ***Rajasthan SRTC*** and ***Karur Vysya Bank*** to take a view that despite non compliance of Section 33(2)(b), the employer's right to prove the charges of misconduct on merits is not taken away.
7	Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, **(1980)**	3	If a domestic enquiry is defective and the charges are proved later before the Tribunal, the order of termination takes effect from the date of the Tribunal's award/approval — not from the

	2 SCC 593		date of the original dismissal order
8	P.H. Kalyani v. M/s. Air France, Calcutta, **AIR 1963 SC 1756**	5	Even if the domestic enquiry is defective the Labour Court can adjudicate the controversy on merits. If the Labour Court uphold the penalty of dismissal, the order of dismissal relates back to the date of the original dismissal order passed by the employer.
9	Workmen of Motipur Sugar Factory (P) Ltd. v. Motipur Sugar Factory, **AIR 1965 SC 1803**	4	Even where no domestic enquiry was held before discharging workmen the Tribunal, in a reference under S.10, can adjudicate on the merits of the decision and the merits of the allegations against the workman.

21. Learned counsel appearing for the petitioner by way of reply would submit the language employed in Section 33A does not permit the view that all disputes including validity of the domestic enquiry can be looked into. Referring to the expression *"shall adjudicate upon the complaint as if it were a dispute referred to or pending before it"* cannot be expanded to say that all disputes relating to the domestic enquiry and finding on charges can be adjudicated in a proceeding under Section 33A. The enquiry under Section 33A is only confined to compliance of Section 33A of the Act, 1947.

22. The Court has considered the contentions and perused the records and noted the ratio laid down in the aforementioned judgments.

Analysis.

23. The consequence of non-compliance of Section 33(2)(b) of the Act, 1947, is settled in terms of the five-judge Bench judgment by the Apex Court in ***Jaipur Zila,*** *supra*.

24. The said judgment by the five-judge Bench of the Apex Court was rendered in the context of divergent views expressed by the Apex Court in ***Punjab Beverages,*** *supra* which disagreed with the views expressed by the Apex Court in ***Straw Board*** and ***Tata Iron and Steel Company*** supra.

25. The question of law framed in ***Jaipur Zila*** *supra* reads as under:

> *"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?"*

26. Before considering the ratio of the judgment in ***Jaipur Zila*** it is also necessary to refer to the views taken in

Straw Board, Tata Iron and Steel Company, and ***Punjab Beverages*** *supra.*

27. In ***Straw Board*** the Apex Court was considering the interpretation of Section 6-E(2)(b) of United Provinces Industrial Disputes Act, UP Act, 1947 which is *pari materia* with Section 33(2)(b) of the Act, 1947. The contention was the workman was dismissed without complying with the requirement of Section 6-E (2)(b) though an application was filed seeking approval. It was urged that the "approval" for dismissal should have been taken before imposing the penalty of dismissal. The Apex Court held that application seeking approval need not be filed before imposing the penalty of dismissal. The Apex Court held that the application seeking approval for penalty of dismissal should simultaneously follow or as part of the same transaction after imposing the penalty of dismissal and the application seeking approval should be the part of the same transaction. *The Court did not answer the question as to whether the Tribunal can look into the merits of the allegation of the misconduct, as such a question did not arise.*

28. In ***Tata Iron and Steel Company,*** the question that fell for consideration was the consequence of withdrawal of

the application under Section 33(2)(b) of the Act, 1947. When the application filed by the employer seeking approval for dismissal post domestic enquiry came up for hearing, the employer urged that the application has become infructuous as the industrial dispute between the employer and the workman is already been decided on merits and award is passed.

29. In the aforementioned factual background in ***Tata Iron and Steel Company*** the Apex Court dealt with the question which reads as under:

> *" If, as a result of the pendency of an industrial dispute between an employer and his employees, the employer is required to apply for approval of the dismissal of his employee under Section 33(2)(b), does such an application survive if the main industrial dispute is meanwhile finally decided and an award pronounced on it? That is the question which this appeal raises for our decision and the answer to this question would depend upon a fair determination of the true scope and effect of the provisions of Section 33(2)(b) of the Act."*

30. The Apex Court after having considered the legislative history behind Section 33 of the Act, 1947, considered its scope and answered as under:

> *"We are therefore satisfied that the Tribunal was right in overruling the contention raised by the appellant that the application made by it for approval under Section 33(2)(b) cease to constitute a valid proceeding by reason of the fact that the main industrial disputes, the pendency of which had made the application necessary, had been finally decided.* "

31. It is relevant to note that the Tribunal had held that the application under Section 33(2)(b) of the Act, 1947 does not become infructuous because of the disposal of the *'main industrial dispute'* which led to situation to file an application under Section 33(2)(b) of the Act, 1947 seeking approval for dismissal of the employee. <u>It is to be noticed that the *'pending industrial dispute'* is distinct from the *'domestic enquiry'* in which the order of dismissal is passed.</u>

32. Thus in ***Tata Iron and Steel Company*** *supra*, the question whether the Tribunal or the Labour Court has the jurisdiction to adjudicate the merits of the charges or the

validity of the domestic enquiry, when the application under Section 33(2)(b) of the Act, 1947 is rejected, has not arisen and not answered.

33. The Apex Court in ***Punjab Beverages*** *supra,* dealt with the interpretations of Sections 33(2)(b) and 33C(2) of the Act, 1947. The workman in the said case was dismissed pursuant to a domestic enquiry. Since an industrial dispute was pending, the employer moved an application before the Tribunal seeking approval for dismissal. The workman opposed the application. Before the application was heard on merits, employer withdrew the application as not pressed. The workman demanded full wages from the date of suspension till the date of demand on the ground that approval for dismissal is not granted. Thereafter, the workman applied under Section 33C(2) seeking wages on the premise the dismissal order is void for want of approval under Section 33(2)(b) of the Act, 1947.

34. The employer opposed the petition on the ground that the order of dismissal has not been set aside and will be enforced unless it is set aside in a proceeding under Section 33A or under Section 10 of the Act, 1947.

35. The Apex Court in the said case has framed the question in the following manner:

> *"The principal question which arises for consideration in these appeals is as to what is the effect of contravention of Section 33(2)(b) of the Act, 1947 of an order of dismissal passed by an employer in breach of it. Then does it render the order of dismissal void and inoperative so that the aggrieved workman can say that he continues to be in service and is entitled to receive wages from the employer."*

36. While answering the said question the Apex Court has held as under:

> *"16. We accordingly hold that the appellant contravened Section 33(2)(b) of the Act, 1947 in dismissing the workmen in both the appeals but such contravention did not have effect of rendering the orders of dismissal void and inoperative and hence the workmen were not entitled to maintain the applications for determination and payment of wages under Section 33C(2)."*

37. The Apex Court in ***Punjab Beverages*** *supra,* did not expressly deal with the question as to whether the Tribunal or the Labour Court will have the jurisdiction to decide the controversy relating to the merits of the charges against the workman leading to the dismissal of the workman. The Apex Court stopped by holding that the dismissal order does not become void or inoperative and consequently held that the workman is not entitled to make an application for payment of wages.

38. The ratio in ***Punjab Beverages*** *supra,* was to the effect that non compliance of Section 33(2)(b) of the Act, 1947 does not render the dismissal order void and inoperative.

39. At this juncture, it is necessary to refer to paragraphs No.14 and 15 of the judgment in ***Jaipur Zila,*** which is relied on by both sides.

> ***"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 victimisation 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 the order of*

discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) of *the Act, 1947 dismissing or discharging an employee brings an end of relationship of the 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 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A 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 33-A and that the order of dismissal or discharge becomes*

invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the 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) of the Act, 1947, Section 33-A 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 33-A, 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 33-A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceedings by making a complaint under Section 33-A 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.*
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> (emphasis supplied)

40. In paragraph No.14 the Apex Court has held that the contention that order of dismissal remains in force till it is set aside under Section 33A is not acceptable. In other words, the Apex Court has held that the rejection of application under Section 33(2)(b) of the Act, 1947 results in deemed employment from the date of original order of dismissal post domestic enquiry or without an enquiry once application under Section 33(2)(b) of the Act, 1947 is rejected.

41. The Apex Court in paragraph No.15 of the said judgment held that even the withdrawal of the application has the same consequence of rendering the order of dismissal ineffective from the date of dismissal of employee.

42. In paragraph No.18 in ***Jaipur Zila,*** the Apex Court has expressly held that the view expressed in ***Punjab Beverages*** on the question is not the correct view.

43. However, the question raised in this petition, as to whether the Tribunal or the Labour Court gets the jurisdiction to adjudicate on the merits of the charges framed, post dismissal of the application under Section 33(2)(b) the Act, 1947 is not raised and answered in ***Jaipur Zila*** *supra.*

44. In the aforementioned context the learned counsel for the respondent urged the contention that the Labour Court had the jurisdiction to adjudicate on the merits of the charges in a pending proceeding under Section 10 of the Act, 1947. In addition it is urged that as the charges are proved, the order of dismissal would relate back to the original order of dismissal passed by the employer pursuant to the domestic enquiry and in that view of the matter, the petitioner is not entitled to back wages during the period in which he was dismissed from service.

45. The learned counsel for the petitioner urged that in view of the law laid down by the Apex Court in ***Jaipur Zila,*** *supra*, there cannot be any further adjudication on the merits of the charges.

46. That leads to the questions (ii) and (iii) framed above in paragraph No. 7.

47. To answer the questions (ii) and (iii) framed above in paragraph No. 7, the Court has to refer to Section 33(2)(b) of the Act, 1947.

48. Section 33(2)(b) of the Act, 1947 reads as under:

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

(1)xxxxx

(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 of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, or 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."

49. On a reading of Section 33(2)(b) of the Act, 1947 it is evident that when an application is filed under the said

provision seeking approval for dismissal the Labour Court or the Tribunal has to consider whether requirement under Section 33(2)(b) of the Act, 1947 are complied with or not.

50. It is settled position reiterated in various pronouncements, including paragraph No.14 in ***Jaipur Zila,*** supra that in a proceeding under Section 33(2)(b), the Court/Tribunal will only examine whether conditions prescribed under Section 33(2)(b) of the Act, 1947 are complied with or not, and whether the order of dismissal is a case of victimisation or unfair labour practice.

51. It is also a well-settled position that the enquiry under Section 33(2)(b) is a summary enquiry as held by the Apex Court in ***M/s. G. Mckenzie and Co. Ltd., Vs. Its Workmen and others***[4]**.**

52. Thus, from the ambit and scope of Section 33(2)(b) the Act, 1947 and the scope of enquiry in an application seeking approval, it is evident that the Labour Court or the Tribunal can reject the application without getting into the merits of the misconduct alleged. In such situation it is not possible to conclude that charges are obliterated or the charges are not proved or that entire disciplinary proceeding is vitiated.

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[4] *AIR 1959 SC 389*

53. Section 33(2)(b) of the Act, 1947 does not say that non-compliance of Section 33(2)(b) the Act, 1947 renders the domestic enquiry on the charges invalid. At the same time there is nothing in the Section 33(2)(b) the Act, 1947 to take a view that jurisdiction of the Labour Court or the Industrial Tribunal is taken away to adjudicate the dispute on the merits on the charges and validity of the domestic enquiry under Sections 10 and 33A of Act, 1947 in case of non-compliance of Section 33(2)(b) the Act, 1947.

54. The above said view is evident from the object behind the provision. Section 33(2)(b) of Act, 1947 is incorporated to ensure that the workman is not victimized because of pendency of another industrial dispute between the workman and the employer. The said provision aims at protecting the workman from victimisation/unfair labour practice because of pendency of another industrial dispute. It has a limited purpose to serve. However, the provision cannot be interpreted and its ambit cannot be expanded beyond what emerges from the plain reading of the provision.

55. There is one more reason to take the view expressed in the preceding paragraph. The employer's right to hold domestic enquiry is a right created under the contract of

employment. Section 33(2)(b) the Act, 1947 regulates the procedure when it comes to imposing penalty of dismissal pursuant to a domestic enquiry, where an industrial dispute is pending consideration between the workman and the employer.

56. The most significant aspect that needs attention is that Section 33(2)(b) of the Act, 1947 does not mandate the approval before holding enquiry in case an industrial dispute is pending between the workman and the employer. The approval is to be taken post order of dismissal under Section 33(2)(b) the Act, 1947. Till that stage, there is no question of seeking any approval.

57. Thus, the Court or the Tribunal dealing with the controversy relating to compliance or non-compliance of requirement of Section 33(2)(b) of the Act, 1947 will only look into the question relating to the compliance of mandatory requirements under Section 33(2)(b) of the Act, 1947 namely; (a).Payment of one month's wage, (b).The simultaneous application/ or an application forming the same transaction, for approval for the order of dismissal, (c).Victimisation and (d).Unfair labour practice; *Since the provision does not contemplate permission or approval for holding the enquiry, the non-compliance cannot invalidate the initiation of enquiry which*

has commenced prior to the stage where the application has to be filed for approval. Thus, the question as to whether initiation of enquiry is valid or not and charges are proved or not will not fall for consideration in a proceeding under Section 33(2)(b) of the Act, 1947 seeking approval.

58. However, if the decision granting approval or rejecting approval is questioned either under Section 33A of the Act, 1947 or under Section 10 of the Act, 1947 all questions including the decision rejecting or granting approval and the question on the merits of the allegation have to be adjudicated by the respective Labour Court or the Tribunal.

59. Thus, the order of dismissal passed without seeking approval, though void or inoperative as held in ***Jaipur Zila,*** the expression "void or inoperative" used in the said judgment *must be* understood in the context of the question raised. If done so, it is only the order of dismissal which becomes void and inoperative from the date of the original order till the date of rejection of application under Section 33(2)(b) of the Act, 1947 and not the disciplinary proceeding if any held before imposing the penalty of dismissal.

60. At this juncture, it is necessary to refer to the judgments of the Apex Court in ***Workmen of Motipur Sugar***

Factory (P) Ltd. V. Motipur Sugar Factory[5]*,* and ***The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. v. The Management & Others***[6] which have held that in case the domestic enquiry conducted by the employer is found to be defective in a proceeding before the Labour Court or Tribunal, or in a situation where the dismissal order is preceded by no enquiry, and when such dismissal order is questioned before the Labour Court or Tribunal, the employer is entitled to lead evidence on the merits of the misconduct and the workman is entitled to contest the charges by leading evidence. This position of law is holding the field till today.

61. This being the position, the inevitable logical conclusion would be that the Tribunal or the Labour Court will have the jurisdiction to look into the merits of the misconduct alleged. If both the parties lead evidence on the charges and if the Tribunal and the Labour Court come to the conclusion that the charges are proved and if the penalty of dismissal imposed by the employer is confirmed, then there is nothing in the Act, 1947 that would prevent the Labour Court or the Tribunal from upholding the penalty of dismissal.

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[5] *AIR 1965 SC 1803*

[6] *(1973) 1 SCC 813*

62. The inevitable legal proposition that emerges on considering the three judgments referred to above namely ***Jaipur Zila***, ***Workmen of Motipur Sugar Factory (P) Ltd.*** and ***Firestone Tyre & Rubber Co***., *supra*, is that there is no provision in the Act, 1947 which takes away the right of the employer to establish the charges levelled against the workman. However, because of the mandate of Section 33(2)(b) of the Act, 1947, the employer has to face the consequence of non-compliance of the said provision. One of the consequences is penal action provided in Section 31 of the Act, 1947. Another consequence is the reinstatement of the workman as if he was employed from the date of dismissal till the date of reinstatement as held in ***Jaipur Zila*** supra.

63. The Apex Court in ***Jaipur Zila,*** supra, has not held that the charges against the workman are wiped out and the disciplinary enquiry is *non est* because of non-compliance of Section 33(2)(b) of Act, 1947. The Apex Court has only held that for non-compliance of Section 33(2)(b) of Act, 1947 the employer cannot be permitted to justify his action of dismissal without an order of reinstatement for the period commencing from the date of original order of dismissal by the employer till the date of rejection of the application under Section 33(2)(b)

the Act, 1947. There is no further prohibition to adjudicate on the merits of the domestic enquiry in ***Jaipur Zila*** *supra.*

64. Section 33(2)(b) of the Act, 1947 does not take away the employer's right to justify the action by proving the misconduct. However, the provision regulates the procedure for imposing the penalty of dismissal, after the conclusion of domestic enquiry.

65. In terms of the law laid down by the Apex Court in ***Jaipur Zila***, *supra*, the workman has to be reinstated with full wages during the period of dismissal. However, if the question relating to non-compliance of Section 33(2)(b) of the Act, 1947 is raised in a dispute under Section 10 of the Act, 1947 or if the said question is raised in a proceeding under Section 33A of the Act, 1947 (as held in ***Automobile Products of India***, *supra*) the Labour Court or a Tribunal can look into the charges of misconduct.

66. <u>On question No. (iv) whether the penalty of dismissal by the Labour Court or the Tribunal in a proceeding under Section 10 or 33-A of the Act, 1947, would relate back to the date of original dismissal imposed by the employer?"</u>

67. The Apex Court in ***P.H. Kalyani*** *supra,* ***R. Thiruvirkolam v. Presiding Officer and another***[7] and ***Punjab Dairy Development Corporation Limited v. Kala Singh***[8], has held that once the charges are proved before the Labour Court or the Tribunal, the penalty of dismissal would relate back to the original date of dismissal. The view is taken in the context of the fact that the dismissal emanated from the misconduct that is attributed against the employee.

68. It is to be noticed that in the said judgments the effect of non-compliance of Section 33(2)(b) of the Act, 1947 is not considered.

69. *In view of the subsequent declaration of law by the five-judges Bench of the Apex Court in* ***Jaipur Zila****, supra, doctrine of relation back cannot have an universal application. The application of doctrine of relation back depends on the question whether Section 33 requirement is complied with or not. If it is complied, and in case dismissal is also confirmed by the authority exercising power under Section 33, then the dismissal order will be effective from the date of original penalty of dismissal imposed by the employer.*

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[7] *(1997) 1 SCC 9*

[8] *(1997) II LLJ 1041 (SC)*

70. *If the application seeking approval is rejected and charges are proved and penalty of dismissal is confirmed in a proceeding under Section 10 or 33-A, such penalty would operate from the date of the award passed by the Tribunal and not from the date of the original order of dismissal. The reason is, the order of dismissal imposed by the employer till it is confirmed by the Tribunal is void or inoperative for the said period. And for non-compliance of Section 33 the employer has to suffer the consequence of paying full wages for the said period.*

71. **Conclusions on the questions of law.**

i. In the event of non-compliance of Section 33(2)(b) of the Act, 1947, the Labour Court or the Tribunal cannot deny the back wages from the date of the penalty of dismissal till the date of the order on application under Section 33(2)(b) of the Act, 1947.

ii. Labour Court or the Tribunal will have the jurisdiction to adjudicate on merits of the misconduct alleged in a proceeding under Section 10 or Section 33A of the Act, 1947 even if the application under Section 33(2)(b) of the Act, 1947, is rejected.

iii. The Apex Court in ***Jaipur Zila*** *supra,* has not held that the *domestic enquiry held prior to the application under Section 33(2)(b) of the Act, 1947* is *non est* in the eye of law.

iv. In a proceeding under Section 10 and Section 33A of the Act, 1947, if the penalty of dismissal is confirmed on proof of charges, and Section 33(2)(b) of the Act, 1947 is found to be violated, the award of dismissal would not relate back to the date of original dismissal imposed by the employer in the event of non-compliance of Section 33(2)(b) of the Act, 1947.

72. As a corollary, the following consequences may follow *in a case where Section 33(2)(b) of the Act, 1947 is not complied.*

(a) The Labour Court or the Tribunal may take a view that charges are proved; or

(b) that the charges are not proved;

(c) In a situation where the charges are proved, the Labour Court or the Tribunal has the option to confirm the order of dismissal or may impose any

other penalty in exercise of jurisdiction under Section 11A of the Act, 1947.

(d) In a situation where charges are proved and penalty of dismissal is affirmed, the order of dismissal will be operative only from the date of the order of the Tribunal and till then the workman shall be deemed to be in service and the workman is entitled to full wages from the date of original dismissal order passed by the employer till the date of confirmation of dismissal by the Labour Court or the Tribunal.

(e) In case, the Court or the Tribunal directs reinstatement and imposes lesser penalty, then in view of the law laid down by the Apex Court in ***Jaipur Zila,*** *supra*, there has to be an award for payment of full wages from the date of dismissal till the date of reinstatement.

(f) In case, in a situation where the charges are not proved, then the Court or the Tribunal should direct payment of full wages from the date of dismissal till the date of reinstatement and will have no option to deny the back wages as the

order of dismissal is inoperative for non-compliance of Section 33(2)(b) the Act, 1947.

(g) If the charges are not proved and in deserving cases where the Court or the Tribunal instead of reinstatement, directs payment of compensation, the Labour Court or the Tribunal is bound to award full wages for the period from the date of dismissal to the date of the award as during such period the workman is deemed to be in employment. And this will be in addition to the compensation for any other period which might have been denied because of not passing the order of reinstatement and awarding compensation.

73. The learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in ***Engineering Laghu Udyog*** *supra*. In paragraph no. 13 of the said judgment, the Apex Court has held as under:

> ***"13.*** *When in terms of the proviso appended to clause (b) of sub-section (2) of Section 33 of the Act, an approval is sought for and is refused, the order of*

dismissal becomes void. If an approval is not obtained, still, the order of punishment cannot be given effect to. It is, therefore, not correct to contend that the Tribunal in a reference under Section 10 of the Act, when it passes an order recording a finding of misconduct, brings life into the dead. Unfortunately, the Court did not take notice of the binding decisions in Motipur Sugar Factory case and Firestone case."

74. The learned counsel for the petitioner would contend that in view of the aforementioned finding of the Apex Court, it is not possible to adjudicate the controversy on the merits of the charges in a proceeding under Section 10 of the Act, 1947.

75. In ***Engineering Laghu Udyog*** *supra,* an employee was dismissed on the charges of misconduct. Before the Labour Court it was urged on behalf of the workman that no domestic enquiry was held before passing the order of dismissal. The Labour Court permitted the parties to lead evidence on merits and demerits of the charges. The Labour Court found that the charges are proved. High Court upheld the finding of the Labour Court. The Division Bench also upheld the finding of the Learned Single Judge and that of the Labour Court.

76. Before the Supreme Court, the Union representing the workman raised a contention that finding that the order of termination relates back to the original order is erroneous.

77. The Apex Court held that the findings on charges by the High Court as well as the Labour Court are correct. It is to be noticed that the Apex Court ultimately dismissed the petition filed by the Union espousing the cause of the workman.

78. What is relevant to notice is the Apex Court has referred to the judgment in ***P.H.Kalyani*** and ***Jaipur Zila*** *supra*. The paragraph No. 14 in ***Engineering Laghu Udyog*** *supra,* reads as under:

> *"14. We may further notice that P.H. Kalyani case has also recently been followed by another Constitution Bench in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma."*

79. It is relevant to notice that judgment in ***P.H. Kalyani*** is by the Constitution Bench of 5 judges. In ***P.H. Kalyani*** the Apex Court in unmistakable terms has held that even in case of defective domestic enquiry and where the application is allowed after considering the evidence led before the Tribunal if the Tribunal comes to the conclusion that the

order of dismissal imposed pursuant to a defective domestic enquiry will also relate back to the original order of dismissal.

80. This being the position the Court has to take a view that observations made in paragraph no. 13 of ***Engineering Laghu Udyog*** *supra*, are obiter.

81. Learned Counsel for the petitioner has made reference to ***Gujarat Steel Tubes Ltd*** *supra*, to urge that the law laid down in ***P.H. Kalyani*** *supra,* is not valid. The Court has to reject the said contention for the simple reason that the judgment in ***Gujarat Steel Tubes Ltd*** *supra,* is rendered by a Bench of 3 judges.

82. At this juncture it is also required to notice that the judgment in ***P.H. Kalyani*** *supra,* was rendered in a situation where the application under Section 33(2)(b) was filed seeking approval of dismissal. However, in ***Jaipur Zila*** *supra,* no such application was filed. In that view of the matter there is no apparent conflict between the two judgments as both judgments were rendered in a different factual scenario attracting different provision of law.

83. In ***P.H. Kalyani*** *supra,* the Apex Court was considering the question whether doctrine of relation back would also apply in a situation where the domestic enquiry is

defective and valid enquiry is held before the Tribunal. As already noticed application seeking approval was filed in the said case and the question of non-compliance of Section 33(2)(b) the Act, 1947 did not arise for consideration. However, in ***Jaipur Zila*** *supra,* the precise question was consequence of non-compliance of Section 33(2)(b) the Act, 1947.

84. This being the position the contention of the respondent that ***Jaipur Zila*** judgment, referring to the ratio in ***Union of India v. Raghubir Singh (Dead) by LRs.***[9] and ***State of U.P. & another v. Synthetic and Chemicals Ltd and another***[10] is *per incuriam* or *sub silentio* cannot be accepted.

85. Likewise, the contention of the petitioner that High Court cannot go beyond the law laid down in ***Engineering Laghu Udyog*** *supra,* by placing reliance on the judgment in ***Suganthi Suresh Kumar v. Jagadeeshan***[11] cannot be accepted as the High Court is bound by the constitution bench judgment in ***P.H. Kalyani*** as well as ***Jaipur Zila*** *supra*.

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[9] *(1989) 2 SCC 754*

[10] *(1991) 4 SCC 139*

[11] *(2002) 2 SCC 420*

However, the ratio in ***Jaipur Zila*** *supra,* is not as wide as urged by the counsel for the petitioner. Moreover in ***Suganthi Suresh*** *supra,* the interpretation of Section 33 of the Act 1947 did not arise for consideration.

86. The Apex Court in ***Karur Vysya, J.H. Patel and Shivasharanappa*** *supra,* has taken a view that the employer's right to defend the charges on merits is not taken away in the event of non compliance of Section 33(2)(b) the Act, 1947. The judgments in ***Karur Vysya*** *and* ***J.H. Patel*** *supra,*are rendered by making reference to judgment in ***Rajasthan State Road Transport Corporation and another v. Satyaprakash and another***[12]*.* It is urged on behalf of the petitioner that the interpretation of ***Jaipur Zila*** judgment in aforementioned three judgments is erroneous. Even without the support of the ratio in ***Rajasthan State Road Transport Corporation, Karur Vysya, J.H. Patel*** and ***Shivasharanappa*** *supra,* and independently considering the ratio in ***Jaipur Zila*** *supra* it is not possible to accept the view that in ***Jaipur Zila*** the Apex Court has held that the adjudication on the merits of the misconduct is impermissible once the application under Section 33(2)(b) the Act, 1947 is rejected.

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[12] *(2013) 9 SCC 232*

87. The judgment in ***Babu Verghese and others v. Bar Council of Kerala and others***[13] also does not come to the aid of the petitioner. The ratio in the said case cannot be made applicable to interpret non-compliance of Section 33(2)(b) the Act, 1947 as rendering domestic enquiry as invalid.

88. The counsel for the petitioner has raised a contention that the respondent cannot urge that the Tribunal is justified in holding the inquiry into the merits of the charges and recording the finding on the merits of the charges without filing a writ petition challenging the award cannot be accepted.

89. The reason is, the Tribunal has recorded a finding in favour of the respondent/employer-KSRTC holding that the domestic inquiry was fair and proper and the charges are proved. The order of dismissal is set aside only for non-compliance of Section 33(2)(b) of Act, 1947 which directed reinstatement. The employer-KSRTC, not being aggrieved by the award directing reinstatement, need not question the award to defend the view taken by the Tribunal which has held that the charges are proved after getting into the merits of the allegations relating to the charges. If the Tribunal had declined

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[13] *(1999) 3 SCC 422*

to exercise the jurisdiction to look into the merits of the charges on the ground that Section 33(2)(b) of Act, 1947 is not complied, then the KSRTC/employer could not have urged the contention as to the jurisdiction of the Tribunal to adjudicate on the merits of the charges in the absence of a challenge to the award in the form of a writ petition.

90. Moreover, the petitioner orally has raised a contention that the Labour Court had no jurisdiction to look into the merits of the charges. The question being the question of law the Court has permitted the petitioner to raise the question and elaborate arguments have been addressed on the said question.

91. The Apex Court in ***Automobile Products of India Limited,*** *supra*, has already held that the authority or the Labour Court under the Act, 1947 can get into the merits of the charges even in a proceeding under Section 33A and workman need not necessarily raise one more dispute under Section 10 of the Act of 1947. In any situation, in the present case, the dispute is raised under Section 10 of Act, 1947. Hence, that question also does not arise. Even if such question arises, the answer would be as aforesaid.

92. As far as penalty of withholding 4 annual increments by holding that the charges are proved, the Court is of the view that the said lesser penalty, instead of dismissal imposed by the employer cannot be said to be shockingly disproportionate to the proven misconduct of not returning the way bill, in a jurisdiction under Article 227 of the Constitution of India.

93. Before concluding the Court acknowledges the assistance rendered by learned counsel on both sides. Hence, the following:

ORDER

(i) The writ petition is ***allowed in part.***

(ii) The impugned award denying the back wages from the date of dismissal till the date of reinstatement on the ground that the charges are proved is set aside.

(iii) The petitioner is entitled to full consequential benefit from the date of dismissal till the date of reinstatement, as if he was employed.

(iv) The penalty imposed by the Labour Court to the extent of denying four annual increments with cumulative effect is confirmed.

(v) Three months time granted to comply with the order failing which the respondent shall pay interest @ 6% per annum on the amount due from the date of order passed by the Labour Court directing reinstatement.

(vi) Questions of law framed are answered as above.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

CHS/RHR/-