

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

WRIT APPEAL NO.985 OF 2023 (L-RES)

BETWEEN:

THE MANAGEMENT OF BEML LIMITED
BANGALORE COMPLEX
NEW THIPPASANDRA POST
BENGALURU-560 075

REP. BY ITS GENERAL MANAGER-HR
MR. SUJIT KUMAR BHUNIYA
AGED ABOUT 57 YEARS

...APPELLANT

(BY SRI. K. ARAVIND KAMATH, ASGI FOR
SRI. SAFALYA S. WAGLE, ADVOCATE)

AND:

1. MR. S. NAVEEN
S/O MR. SAMPANGI RAMAIAH
AGED ABOUT 52 YEARS
R/AT No.122, 5TH BLOCK
DODDA BOMMASANDRA POST

Digitally
signed by
PAVITHRA N
Location:
High Court
of Karnataka

BANGALORE-560 097

2. MR. L. MARAN
S/O LATE S. LOGANATHAN
AGED ABOUT 54 YEARS
R/AT NO.779
17TH CROSS, 5TH MAIN
5TH BLOCK, HMT LAYOUT
VIDYARANYAPURAM
BANGALORE-560 097

...RESPONDENTS

(BY SHRI. MURALIDHARA, ADVOCATE FOR SHRI. NARAYANA
SWAMY K. B., ADVOCATE)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT, 1961, PRAYING TO ALLOW THIS WRIT APPEAL
BY SETTING ASIDE THE ORDER DATED 11.04.2023 PASSED IN
W.P.NO.19338/2016 (L-RES) AND CONSEQUENTLY DISMISS THE
WRIT PETITION WITH COSTS.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 07.07.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN**
J., PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This appeal is filed challenging the Order dated 11.04.2023 passed by the learned Single Judge in Writ Petition No.19338/2016 (L-RES).

2. We have heard Shri. K. Aravind Kamath, learned Additional Solicitor General of India appearing for the appellant and Shri. Muralidhara and Shri. Narayana Swamy, learned counsel appearing for respondents No.1 and 2.

3. The question that arises for consideration in the instant case is whether an order passed by the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act, 1947 would bind the adjudication to be conducted by the Labour Court under Section 10(4) of the Industrial Disputes Act.

4. The learned ASGI appearing for the appellant would submit that the respondents who were appointed as

Pharmacist Group-'B' in the appellant - Management had been issued with a show cause notice with regard to misconduct committed on their part in the maintenance of stock of medicines in the Pharmacy. An Industrial Dispute as ID No.69/2007 was raised by the workmen. The appellant appointed an Enquiry Officer, who submitted a report holding that the charges levelled against the respondents were proved and consequently, dismissed them from service by Order dated 29.05.2009. In view of the pendency of ID No.69/2007, the appellant filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the Industrial Tribunal seeking *post facto* approval to the order of dismissal. Twelve documents were marked by consent and the opposite party/workman was examined as OW-1 before the Industrial Tribunal. The Industrial Tribunal held that the findings of the Enquiry Officer could not be characterised as perverse and that the charges constituted serious misconduct. Therefore, the Industrial Tribunal held that the enquiry conducted against the respondents was "fair and proper" by Order dated 13.04.2011. However, the

Industrial Tribunal rejected the approval application by Order 29.09.2012, holding that the payment one month's wages and filing of approval application in Form-K were not done simultaneously as required under Section 33(2)(b) of the Industrial Disputes Act.

5. The Order dated 29.09.2012 was challenged before this Court in W.P.No.11191/2013 connected with W.P.No.11192/2013, wherein the learned Single Judge considered the issue whether the orders of dismissal of the respondents, tendering of one month's wage and filing of application under Section 33(2)(b) constituted compliance with the *proviso* of Section 33(2)(b) of the Industrial Disputes Act. The question was answered in the affirmative and the learned Single Judge held that the Industrial Tribunal was not justified in its findings. Consequently, the writ petitions were allowed by Order dated 29.01.2014 and the Order of the Industrial Tribunal dated 29.09.2012 was quashed.

6. In the meanwhile, respondents had also filed I.D.No.114/2009 and I.D.No.115/2009 under Section 10(4)

of the Industrial Disputes Act, challenging the Order of dismissal against the respondents, before the II Additional Labour Court, Bengaluru ("Labour Court") on 30.03.2009. The Labour Court framed the preliminary issue - whether the domestic enquiry conducted by the appellant was fair and proper, which was answered in the negative by Order dated 15.01.2013. On the merits of the case, the appellant was granted opportunity to prove the charges and examined three witnesses. By common Award dated 29.01.2016, the Labour Court allowed the petitions of the respondents and granted the respondents reinstatement, full back-wages, continuity of service and consequential benefits.

7. The appellant challenged the Order dated 15.01.2013 on the preliminary issue and the Award dated 29.01.2016 in W.P.No.19338/2016 (L-RES). The appellant had contended before the learned Single Judge that once the Industrial Tribunal had held the domestic enquiry to be "fair and proper", it was not open to the Labour Court to record a contrary finding. The learned Single Judge held that the principle of *res judicata* has no part to play in the

adjudication of an industrial dispute under Section 10 of the Industrial Disputes Act. Further, the appellant having failed to examine the Enquiry Officer, the Labour Court was justified in holding that the domestic enquiry conducted against the respondents was not fair and proper. Upon examining the evidence of MW1, MW2 and MW3, it was held that the appellant had failed to establish the charges by producing cogent evidence. The learned Single Judge, therefore, found no illegality in the Labour Court's findings. The Writ Petition was allowed in part. It was further held that though the termination was illegal and unjust, the Labour Court was not justified in awarding full back wages and accordingly modified the award by reducing the back wages from 100% to 75%. The present appeal is filed assailing the said Order.

8. The learned ASGI appearing for the appellant contends that the material on record establishes the legality of the disciplinary action. In the proceedings under Section 33(2)(b) of the Industrial Disputes Act, the Industrial Tribunal after recording detailed oral and documentary

evidence from both parties, held that the domestic enquiry was fair and proper. It is contended that once the Industrial Tribunal had recorded findings on the basis of the same evidence, the Labour Court could not return a contrary finding on the fairness of the enquiry without any additional material. It is further contended that the Labour Court ignored the evidence adduced before it after the preliminary issue was decided. Three Management witnesses were examined, including the Investigating Officer, whose evidence established the misconduct, the manner of investigation and the financial loss caused to the appellant. The learned Single Judge failed to independently analyse this evidence and merely affirmed the Labour Court's conclusions without adequate reasons.

9. It is further contended that the Labour Court also failed to appreciate the documentary evidence, including stock registers and overlooked the charge relating to destruction of records. The learned Single Judge erred in holding that the enquiry was vitiated for non-examination of the Enquiry Officer before the Labour Court, despite the

Enquiry Officer having already been examined and extensively cross-examined in the Section 33(2)(b) proceedings before the Industrial Tribunal, the evidence of which formed part of the record. It is further contended that the punishment of dismissal was proportionate to the gravity of the proved misconduct and that the learned Single Judge exceeded the permissible scope of judicial review by interfering with the disciplinary action. Reliance is placed on, ***Uttar Pradesh State Road Transport Corporation v. Gajadhar Nath*** reported in ***AIR 2022 SC 139*** and ***Mangilal Kajodia v. Union of India*** reported in ***(2020) 2 SCC 723***, to contend that where misconduct stands proved on appreciation of evidence, the Labour Court cannot disregard such findings without justification, the punishment should not ordinarily be interfered with and grant of back wages is not automatic but must be based on relevant considerations.

10. The learned ASGI relying on the decision of the Apex Court in the case of ***Rajasthan State Road Transport Corporation v. Bharat Singh Jhala (Dead)***

Son of Shri Nathu Singh, through Legal Heirs and Another reported in ***2022 SCC OnLine SC 1335***, contends that once a decision is returned by the Industrial Tribunal that the enquiry was fair and proper and that the punishment was rightly imposed, then, the Labour Court would have no right to adjudicate the said point afresh. The decision of a Division Bench of this Court in the case of ***Fouress Engineering Karmika Sangha v. Management of Fouress Engg (1) Pvt. Ltd*** passed in ***Writ Appeal No.1357/2025 (L-RES)*** by order ***dated 20.01.2026***, is also relied on in support of this contention.

11. The learned counsel appearing for the respondents on the other hand contend that the scope of examination under Section 33(2)(b) of the Industrial Disputes Act and the adjudication under Section 10(4) of the Industrial Disputes Act are completely separate and distinct and that there can be no *res judicata* between orders on applications which are completely different and distinct. Relying on the provisions of Section 33(2)(b) and Section

10(4) of the Industrial Disputes Act as well as the decisions of the Apex Court in the following cases:-

- ***M/s.G Mckenzie and Co. Ltd. v. Its Workmen and Others*** reported in ***AIR 1959 SC 389***, and
- ***John D'Souza v. Karnataka State Road Transport Corporation*** reported in ***(2019) 18 SCC 47***.

it is contended that the scope of the examination under Section 33(2)(b) of the Industrial Disputes Act is only whether there is an element of victimisation in the passing of an order during the pendency of a proceeding before the Labour Court or Industrial Tribunal or any other adjudicatory body. It is submitted that on approval being granted under Section 33(2)(b) of the Industrial Disputes Act, the question of the correctness of the order has then to be adjudicated under Section 10(4) of the Industrial Disputes Act. It is submitted that in the instant case, the facts are that no evidence was led before the Industrial Tribunal under Section 33(2)(b) by the Management. Though, one of the employees had been examined as OW-1, no person was examined on behalf of the Management. The marking of the documents by consent was only for the purpose of deciding

whether approval is to be granted under Section 33(2)(b) of the Industrial Disputes Act for the order of punishment.

12. Further, it is contented that the contention that the adjudication before the Labour Court under Section 10(4) of the Industrial Disputes Act is hit by *res judicata* was never raised before the Labour Court. The Labour Court went on to adjudicate the question as to whether the decision was proper. The Management did not appear and adduce any evidence in support of the enquiry report or the dismissal order before the Labour Court. Therefore, the Labour Court held that the enquiry was not fair and proper and permitted the Management to adduce evidence before it to prove the charges alleged. This was done. The Management adduced evidence before the Labour Court, the witnesses were cross examined by the respondents herein, who were also permitted to adduce evidence. It was after considering the evidence adduced by the Management as well as the workmen that the Labour Court came to the conclusion that the respondents were liable to be exonerated of the charges alleged against them.

13. The factual situation in the decision of the Apex Court in ***Rajasthan State Road Transport Corporation's*** case (supra), and of this Court in ***Fouress Engineering Karmika Sangha's*** case (supra), are completely different. Those are cases where the parties had proceeded to adduce proper evidence on the question of legality of the findings in the domestic enquiry before the Industrial Tribunal examining the application under Section 33(2)(b) of the Industrial Disputes Act. Further, the question of the findings being *res judicata* in the proceedings under Section 10(4) of the Industrial Disputes Act, were raised before the Labour Court as well. This is not the case in the present proceedings. Here clearly no oral evidence had been adduced by the Management except marking of the documents by consent before the Industrial Tribunal, in Section 33(2)(b) proceedings to justify a finding of legality of the order of dismissal.

14. Further, before the Labour Court also, no plea of *res judicata* was raised and in the first instance, no evidence was adduced in support of the domestic enquiry. The

domestic enquiry was therefore found to be not fair and proper. However, the Management was given an opportunity to adduce evidence to prove the charges. They did so adduce evidence, but failed to prove the charges. It is in the above circumstances, that the order of reinstatement with 100% back wages was passed by the Labour Court.

15. The learned counsel appearing for respondents No.1 and 2 places reliance on the following decisions as well:-

- ***The Automobile Products of India Ltd. v. Rukmaji Bala and Others*** reported in **1955 SCR 1241;**
- ***The Lord Krishna Textile Mills v. Its Workmen,*** reported in **AIR 1961 SC 860;**
- ***M.L.Bose & Co. Pvt. Ltd., Calcutta v. Its employees*** reported in **AIR 1961 SC 1198;**
- ***Devinder Singh v. Municipal Council, Sanaur*** reported in **(2011) 6 SCC 584;**
- ***Union of India & Others v. P.K.Kuttappan*** reported in **(2007) 10 SCC 721;**
- ***Tapash Kumar Paul v. Bharat Sanchar Nigam Ltd. and another*** reported in **(2014) 15 SCC 313;**

- ***H.D.Sharma v. Nothern India Textile Research Association and another*** reported in **(2000) 3 SCC 567;**
- ***The Management of Wenger & Co. and Others v. Their Workmen*** reported in **AIR 1964 SC 864;**
- ***Rajasthan State Road Transport Corporation v. Bharat Singh Jhala (Dead) s/o Nathu Singh, through Legal Heirs,*** reported in **2022 SCC OnLine SC 1335;**
- ***Jai Singh and Others v. Municipal Corporation of Delhi and Another*** reported in **(2010) 9 SCC 385;**
- ***Usha Breco Mazdoor Sangh v. Management of Usha Breco Ltd. and Another*** reported in **(2008) 5 SCC 554;**
- ***Mukunda Bore v. Bangshidhar*** reported in **AIR 1980 SC 1524;**
- ***Roop Singh Negi v. Punjab National Bank and Others*** reported in **(2009) 2 SCC 570;**
- ***State of Haryana and Others v. Devi Dutt*** reported in **(2006) 13 SCC 32;**
- ***Sayed Yakoob v. K.S. Radhakrishnan and Others*** reported in **AIR 1964 SC 477;**
- ***Neeta Kaplish v. Presiding Officer, Labour Court and Another*** reported in **(1999) 1 SCC 517;**

- ***Hardwari Lal v. State of U.P. and Others*** reported in **(1999) 8 SCC 582;**
- ***RPG Cables Ltd. v. Sri G.M.Kulkarni***, by order ***dated 26.11.2012*** passed in ***W.A.No.600/2012***, and
- ***State of Uttar Pradesh and Another v. Man Mohan Nath Sinha and Another*** reported in **(2009) 8 SCC 310.**

16. Having considered the contentions advanced, we notice that the scope of the examination under Section 33(2)(b) of the Industrial Disputes Act is specifically to consider whether an order adverse to the interests of the workmen passed during the pendency of an Industrial Dispute amounts to an act of victimisation. It is to ascertain this fact, that an enquiry is contemplated under the provisions of Section 33(2)(b) of the Industrial Disputes Act. A reading of the provision itself would make this aspect clear. Section 33(2)(b) of the Industrial Disputes Act, reads as follows:-

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

x x x x x

(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 3[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) x x x x x

(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."

17. The Apex Court in ***M/s. G Mckenzie's*** case (supra), has clearly held as follows:-

"17. *As to the applicability of the principle of res judicata, the argument raised by counsel for respondents was that the findings of the State Industrial Tribunal in proceedings under Section 33 of the Act which were confirmed by the Labour Appellate Tribunal barred the right of the management of the appellant Company to start a fresh enquiry in respect of the same incident which formed the subject-matter of the previous enquiry. There is no force in this contention, which seems to be based on a misapprehension as to the nature and scope of proceedings under Section 33. That Section does not confer any jurisdiction on a tribunal to adjudicate on a*

dispute but it merely empowers the Tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute. And in deciding whether permission should or should not be given, the Industrial Tribunal is not to act as a reviewing tribunal against the decision of the management but to see that before it lifts the ban against the discharge or punishment of the workmen the employer makes out a prima facie case. The object of the Section is to protect the workmen in pending industrial disputes against intimidation or victimisation. As said above principles governing the giving of permission in such cases are that the employer is not acting mala fide, is not resorting to any unfair labour practice, intimidation or victimisation and there is no basic error or contravention of the principles of natural justice. Therefore when the Tribunal gives or refuses permission it is not adjudicating an industrial dispute, its function is to prevent victimisation of a workman for having raised an industrial dispute. The nature and scope of proceedings under Section 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does not bar the raising of an industrial dispute when as a result of the permission of the Industrial Tribunal the employer dismisses or punishes the workmen. "

(emphasis supplied)

18. However, the scope of the adjudication under Section 10(4) of the Industrial Disputes Act is completely

different. It is at this stage of the proceedings, that the question whether the enquiry was vitiated or the dismissal was proper is to be examined. In the instant case, the question whether the enquiry was properly conducted was considered by the Labour Court, considering the claim petition under Section 10(4) of the Industrial Disputes Act. At that stage of the proceedings, the Management did not adduce any evidence or defend its case with regard to the legality of the enquiry. It is in those circumstances that the Labour Court found that the enquiry was not properly conducted. Further, the Labour Court permitted the Management to adduce evidence in support of the charges levelled against the workmen. The Management did not raise a contention that the question of legality of the inquiry stood concluded in the proceedings under Section 33(2)(b) of the Industrial Disputes Act. On the other hand, they proceeded to lead evidence in support of the charges leveled against the workmen. The workmen cross-examined the witnesses and also proceeded to adduce their own evidence. It is on consideration of the evidence adduced by the management

as well as by the workmen that the Labour Court came to a conclusion that the charges were not proved and the imposition of the penalty was not proper.

19. The learned counsel appearing for the appellant places reliance on ***Fouress Engineering Karmika Sangha***'s case (supra), to contend that the principle of *res judicata* would apply to the instant case. We notice that in ***Fouress Engineering Karmika Sangha***'s case (supra), the Division Bench of this Court applied the bar of *res judicata* because the Industrial Tribunal had examined the Enquiry Officer as AW-1, both sides had led oral and documentary evidence, and the finding on fairness was rendered on a detailed enquiry conducted under Section 33(2)(b) of the Industrial Disputes Act. However, the Division Bench also held that where the Industrial Tribunal had not conducted a detailed enquiry with both sides leading oral and documentary evidence, but has only recorded a *prima facie* finding, the principle laid down in ***McKenzie***'s case (supra) would continue to apply, and *res judicata* does not apply.

20. In the instant case, a perusal of the Order of the Industrial Tribunal dated 13.04.2011 in Serial Applications No.21/2009 and 22/2009 in I.D.No.69/2007, would show that the Industrial Tribunal has recorded that on the fairness of the domestic enquiry the applicant - Management had not led any evidence and that Ex.A1 to A12 were marked by consent of the opposite party - workmen. The only oral evidence tendered before the Industrial Tribunal on the preliminary issue was that of the opposite party as OW-1. The finding of the Industrial Tribunal that the domestic enquiry was fair and proper was arrived at on a perusal of the enquiry file, the enquiry report at Ex.A9, admissions from OW-1 in cross-examination, and the workmen's own written argument in which they contended that the grievance was against the Presenting Officer and not the Enquiry Officer. Therefore, the judgment of the Division Bench in ***Fouress Engineering Karmika Sangha's*** case (supra), is distinguishable on the basis of facts.

21. In the facts and circumstances of the instant case, we are of the clear opinion that the initial finding

entered by the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act cannot operate as *res judicata* in proceedings before the Labour Court under Section 10(4) of the Industrial Disputes Act. The finding of the learned Single Judge that the proceedings under Section 33(2)(b) of the Industrial Disputes Act cannot be treated as *res judicata* in the adjudication under Section 10(4) of the Industrial Disputes Act was completely justified in the facts and circumstances of the instant case. We see no grounds to interfere with the findings of the learned Single Judge. The writ appeal therefore fails and the same is accordingly ***dismissed.***

All pending interlocutory applications shall stand *disposed of.*

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

cp*