

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9343 OF 2015

- 1 Vaidyakiya Karmachari Sanghatana,
Ahmednagar District,
Through its General Secretary,
Vilas S/o. Bhikulal Mundada,
Age : 45 years, Occu. Nil,
R/o. Kolhar, Tq. Rahata,
District - Ahmednagar.
- 2 Anna S/o. Nanasaheb Nawale,
Age : Major, Nil,
R/o. Vetalbaba Chowk,
Talegaon Road, Loni (Kh.),
Tq. Rahata, Dist. Ahmednagar. ...Petitioners.

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10578 OF 2015**

Bhaskar S/o. Sukhdeo Jeurkar,
Age : 38 years, Occu. Nil,
R/o. Astgaon, Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10579 OF 2015**

Abasaheb S/o. Ambadas Musmade,
Age : 45 years, Occu. Nil,
R/o. Tambhere Songaon Road,
Tq. Rahuri, Dist : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10580 OF 2015**

Arjun S/o. Bhimraj Gholap,
Age : 49 years, Occu. Nil,
R/o. Hanumantgaon, Tq. Rahata,
District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10581 OF 2015**

Nanasaheb S/o. Naguji Khandagale,
Age : 55 yrs, Occu. Nil,
R/o. Near Bail Bazar, Loni (Kh.),
Tq. Rahata, District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10582 OF 2015**

Machindra S/o. Bhaguji Jadhav,
Age : 50 yrs, Occu. Nil,
R/o. Rajuri Road, Babhaleshwar,
Tq. Rahata, Dist : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10583 OF 2015**

Rajendra S/o. Madhav Joshi,
Age 47 yrs, Occu. Nil,
R/o. Mandve, Post : Phattyabad.
Tq. Shrirampur, District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10584 OF 2015**

Ganpat S/o. Deoram Pardhe,
Age 45 yrs, Occu. Nil,
R/o. Durgapur, Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10585 OF 2015**

Kailash S/o. Vinayak Bramhane,
Age : 48 yrs, Occu. Nil,
R/o. Hanumantgaon, Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10586 OF 2015**

Sampat S/o. Raghunath Pulate,
Age : Major, Occu. Nil,

R/o. Chinchpur, Near Lavate Vasti,
Tq. Sangamner, District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10587 OF 2015**

Sadik Noor Mohd. Shaikh,
Age : Major, Occu. Nil,
R/o. Hasnapur, Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10588 OF 2015**

Ashok S/o. Dada Bramhane,
Age 55 yrs, Occu. Nil,
R/o. Vitthal Tula, Vikhe,
Baba Hotel, Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10589 OF 2015**

Vayjayanti Kishor Bharate,
Age 41 yrs, Occu. Nil,
R/o. Dadh (Bk.), Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10590 OF 2015**

Vitthal S/o. Damodhar Gagare,
Age 49 yrs. Occu. Nil,
R/o. Tambhere-Gagare Vasti,
Tq. Rahuri, District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10591 OF 2015**

Ayub Shaikhlal Shaikh
Age : Major, Occu. Nil,
R/o. Astgaon, Loni (Bk.),
Padmashreenagar, Tq. Rahata,
District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10592 OF 2015**

Rajendra S/o. Karbhari Chopde,
Age : 40 yrs, Occu. Nil,
R/o. Hanumantgaon, Tq. Rahata,
District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10593 OF 2015**

Nijam Kankar Shaikh,
Age : 50 yrs, Occu. Nil,
R/o. Hasnapur, Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10594 OF 2015**

Anant S/o. Shravan Maghade,
Age 50 yrs, Occu. Nil,
R/o. Musale (Bk.), Loni (Bk.),
Tq. Rahata, District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10595 OF 2015**

Rajendra S/o. Pundalik Kshirsagar,
Age 50 yrs, Occu. Nil,
R/o. PMT OPD, Babhaleshwar,
Tq. Rahata, District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10596 OF 2015**

Namdeo S/o. Nivrutti Pawar,
Age 42 yrs, Occu. Nil,
R/o. Near Church, Loni (Kh.),
Tq. Rahata, District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10597 OF 2015**

Dattatraya S/o. Anandrao Phatangare,
Age : Major, Occu. Nil,
R/o. Dighe Vasti, Talegaon
Bye Pass Road, Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10598 OF 2015**

Bhaskar S/o. Bhikaji Khemnar,
Age 38 yrs, Occu. Nil,
R/o. Chanengaon, Tq. Sangamner,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10599 OF 2015**

Dattatrya S/o. Nanasaheb Nirmal,

Age : Major, Occu. Nil,
R/o. Pimpri-Nirmal, Tq. Rahata,
District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10600 OF 2015**

Balasaheb S/o. Vishwanath Jadhav,
Age : 49 yrs, Occu. Nil,
R/o. Kolhar (Kh.), Near Sawata Mandi,
Tq. Rahata, District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10601 OF 2015**

Prabhakar S/o. Maruti Thete,
Age : Major, Occu. Nil,
R/o. Pohar Bhagwantipur,
Near Panchamori,
Tq. Rahata, District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10602 OF 2015**

Laxman S/o. Baburao More,
Age 55 yrs, Occu. Nil,
R/o. Lohagaon, Tq. Rahata,
District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10603 OF 2015**

Kailash S/o. Nagnath Sable,
Age : 49 yrs, Occu. Nil,
R/o. Satral Tambhere Road, Songaon,
Tq. Rahuri, District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10604 OF 2015**

Peer Mohd. Kaymu Patel,
Age : Major, Occu. Nil,
R/o. Phattyabad, Tq. Shrirampur,
District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

**WITH
WRIT PETITION NO. 10605 OF 2015**

Popat S/o. Santu Dhone,
Age 49 yrs, Occu. Nil,
R/o. Ashwi (Bk.), Tq. Sangamner,
District : Ahmednagar.

...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),

Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10606 OF 2015**

Bharat S/o. Mogal Kharat,
Age : 43 yrs, Occu. Nil,
R/o. Nimgaonjali, Tq. Sangamner,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10607 OF 2015**

Rajendra S/o. Maruti Bidwe,
Age 51 yrs, Occu. Nil,
R/o. Songaon, Tq. Rahuri,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10608 OF 2015**

Jamuna S/o. Tukaram Kadam,
Age : Major, Occu. Nil,
R/o. Kolhar (Bk.), Amedkar Nagar,
Tq. Rahata, District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10609 OF 2015**

Eknath S/o. Naguji Khandagale,
Age : 44 yrs, Occu. Nil,
R/o. Near Bail Bazar, Loni (Bk.)
Tq. Rahata, District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10610 OF 2015**

Abbas Ali Ajgarli Patel,
Age : 44 yrs, Occu. Nil,
R/o. Hasnapur, Tq. Rahuri,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10611 OF 2015**

Sopan S/o. Houshiram Sapte,
Age : Major, Occu. Nil,
R/o. Astgaon, Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar. ...Respondent

**WITH
WRIT PETITION NO. 10612 OF 2015**

Sharif Mohd. Shaikh,
Age : Major, Occu. Nil,
R/o. Hasnapur, Tq. Rahata,
District : Ahmednagar. ...Petitioner

Versus

Pravara Medical Trust,
At & Post - Loni (Bk.),
Tq. Rahata, Dist. Ahmednagar.

...Respondent

...
Advocate for Petitioners : Shri Sangeet L.V.
Advocate for Respondent : Shri Hon V.D. Sr. Advocate
i/b Shri Hon Ashwin V.

...

CORAM : RAVINDRA V. GHUGE, J.

Dated: December 21, 2015

...

ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petitions are taken up for final disposal.
4. In all these Writ Petitions, the petitioners have challenged the judgment and orders dated 29.6.2015, delivered by the Industrial Tribunal in Approval Applications Nos.1 to 36 of 2015. The respondent in all these petitions is the same management. The petitioners are the Union and individual workmen, who are identically placed. I have, therefore, taken up all these petitions together for hearing and disposal.
5. The petitioners submit that prior to their termination on 23.1.2015

about 43 workmen were terminated in the year 2009-10. The Union raised an industrial dispute with regard to the termination of these 43 workers. No other dispute was raised by the Union, save and except the termination of these 43 persons. As such, it was only these 43 employees who were concerned with their individual terminations.

6. Since the conciliation proceedings failed, the appropriate Government referred these disputes of 43 terminations to the Industrial Tribunal at Ahmednagar. The said proceeding was registered as Reference (IT) No. 7 of 2010 which is still pending. Statement of claim was filed on their behalf and Annexure "A" annexed to the statement of claim, mentioned the details of these 43 workers. Shri Sangeet, for the sake of clarity, submits that none amongst these petitioners are amongst the said 43 workers.

7. He further submits that on 23.1.2015, the respondent / management terminated the petitioners / workers by issuing individual termination orders. On the same day, the respondent filed Approval Application Nos. 1 to 36 of 2015. These applications were with reference to 36 dismissed petitioner / workmen and were filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 ("the ID Act").

8. In response to the above said applications, Shri Sangeet submits that individual written say were filed by these petitioner / workmen. All contentions of the respondent set out in the approval applications were

refuted. However, in paragraph No.6, it was specifically averred by the petitioner / workmen that the approval applications under Section 33(2)(b) were not maintainable as none of the requirements under Section 33(2)(b) were fulfilled. It was specifically averred that no approval application could be entertained by the Tribunal since neither these 36 workmen were concerned with Reference (IT) No. 7 of 2010, nor were they connected with the termination of the 43 workmen mentioned in Annexure "A".

9. He, therefore, submits that the Industrial Court should have concluded that the Approval Applications are not required to be entertained and should have disposed off the Approval Applications without considering them on their merits.

10. The petitioners rely on the following judgments in support of their case:-

- (a) Hindustan Lever Ltd. Vs. Ramkrishna Bhikha Dushane - 2008 (5) Mh.L.J. 735,
- (b) Anvarkhan Ghafurkhan Pathan Vs. Transport Manager - 2011 CJ (Guj) 321,
- (c) Karan Singh Vs. Authorised Disciplinary Authority - LAWS (RAJ) -2008-12-18,
- (d) Delhi Transport Corporation Vs. Nihal Singh LAWS (DLH) -2010-5-76,
- (e) Jaipur Zilla Sahakari Bhoomi Vikas Bank Limited Vs. Ram Gopal Sharma and others 2002 (92) FLR 667,
- (f) Chief Traffic Manager Vs. M. Narayana Reddy, 2013 LLR 642,

- (g) North West Karnataka Road Transport Corporation
Vs. Mohammad Shafi Aniruddin Dalawai
2013 LLR 646,
- (h) R. Rangaswamy Vs. Vice-Chairman and Managing Director,
2014 (142) FLR 595,
- (i) Ashok Bhattacharjee Vs. State of Assam
2013 (137) FLR 600,
- (j) Management of North Eastern Carrying Corporation
Vs. Presiding Officer, Labour Court, Assam
2013 (137) FLR 606,
- (k) Shri Anant R. Kulkarni Vs. Y.P.Education Society,
2013 LLR 654 and
- (l) M/s Glaxo Laboratories Vs. The Presiding Officer
1983 (47) FLR 508.

11. Shri Sangeet, therefore, submits that if the Approval Applications are held to be untenable in law, the Industrial Court should have rejected the Approval Applications and as a consequence of which, the petitioner / workmen would have been deemed to be in employment in the light of the judgment of the Apex Court (Five Judges' Bench) in the case of Jaipur Zilla (Supra). He, therefore, submits that these petitions be allowed and the impugned judgments of the Tribunal be quashed and set aside. It be concluded that the petitioners are continued in employment with effect from the respective date of termination with all incidental and consequential service benefits.

12. Shri Hon, the learned Sr. Advocate on behalf of the respondent / management submits that the Approval Applications were filed by way of abundant precaution. Though the respondent was aware that none of these

petitioners are concerned with Annexure "A" in the pending reference pertaining to 43 other employees, yet it preferred to file these approval applications only for the reason that the management, in its wisdom had the apprehension that the petitioners would contend that because the Union and the 43 workers are involved in the earlier reference cases, these petitioners could be said to be connected with the Industrial Disputes pending before the Tribunal, as they are the members of the same Union. He further adds that if there was no requirement of filing the approval applications and if the contention of the petitioner / workmen is that Section 33(2)(b) is not attracted, respondent / management has no difficulty if the approval applications are disposed off because even if the approval is granted, the petitioners will have to individually challenge their individual termination which is a separate cause of action

13. He further submits that the granting of approval applications by the Industrial Tribunal is restricted only to the extent of a conclusion that a reasonable opportunity of hearing and a fair hearing was given to the petitioner / workmen in their domestic enquiry conducted under the Standing Orders. In any case, since the truth is that the principles of natural justice were complied with by the respondent / management, the respondent / management can surely prove that the domestic enquiries are not vitiated, either by way of an approval application or may be even in a challenge posed by the petitioners to their termination orders.

14. To the extent of the contention of the petitioners that once this

Court concludes that the approval applications were not required to be filed, the petitioners would stand reinstated with all service benefits from 23.1.2015, is concerned, the judgment of the Apex Court in the case of Jaipur Zilla (supra) would be of no assistance to the petitioners. He, therefore, submits that no interference is called for and these petitions be dismissed.

15. I have considered the submissions of the learned Advocates as have been recorded herein above

16. Section 33 of the ID Act reads as under:-

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

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) *During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute [or, where there are no such standing order, 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, 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.

(3) *Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute--*

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.--For the purposes of this sub-section,

a "protected workman", in relation to an establishment, means a workman who, being [a member of the executive or other office-bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of subsection (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to subsection (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such

proceedings being completed.”

17. It is not in dispute that Section 33(1)(a) or (b) is not applicable to the case in hand. The issue, therefore, is whether Section 33(2)(b) could be said to be applicable. The litigating sides have submitted that the claim of 43 workers was espoused by the Union in Reference (IT) No. 7 of 2010. Eventually, if the Reference is allowed, it would only be beneficial to the 43 workers mentioned in Annexure “A” to the statement of claim. There is no Industrial Dispute under the Central Act (ID Act) or the Bombay Industrial Relations Act, 1946, pending before the Industrial Tribunal, which concerns all the members of the said Union.

18. It cannot be disputed that the Industrial Tribunal will have to deal with the termination of each of the 43 workers in pending reference cases. Issues as regards whether the enquiry was conducted fairly, whether the findings of the enquiry officers are sustainable, whether the punishment awarded is shockingly disproportionate etc., will have to be gone into in relation to each of the terminated workers. The said pending reference, in my view, is, therefore, limited only to the interest of the 43 workers mentioned in Annexure “A”. It is only coincidental that the Union is taking the lead along with the 43 workers in espousing their individual cause as is provided for under Section 21 and 22 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the Act of 1971”).

19. Sections 21 and 22 of the Act of 1971 read as under:-

“21. Right to appear or act in proceedings relating to certain unfair labour practices. -

(1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognised union :

Provided that, where there is no recognised union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices.

(2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear under section 30 of the Bombay Act.

22. Rights of unrecognised unions. -

Such officers, members of the office staff and members of any union (other than a recognised union) as may be authorised by or under the rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed, have a right -

(i) to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member

relating to his discharge, removal, retrenchment, termination of service and suspension;

(ii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer.”

20. In the instant case, the petitioner / workmen themselves have contended in the written statement that they are not concerned with the pending proceedings in Reference (IT) No. 7 of 2010. The outcome of the said proceedings in no way would affect the petitioners or would be beneficial for them. Similarly, none of them have been terminated from employment with regard to any matter connected with Reference (IT) No. 7 of 2010. So also, it is the specific case of the petitioners that they have no concern whatsoever with the 43 workers or the Union espousing their cause. I am, therefore, of the view that Section 33(2)(b) was not attracted in the case of the petitioner / workmen and there was no obligation on the part of the respondent / management in filing the Approval Applications.

21. In the above backdrop the approval applications filed by the management could only be said to be an outcome of an abundant precaution. The Industrial Court should have considered the specific contention of the non-applicant workers as well as the Union which has signed the written statement, that Section 33(2)(b) was not applicable and hence the Industrial Court should have disposed off the approval application at the threshold.

22. In so far as the vehement submission of Shri Sangeet that if the approval applications are rejected or held to be untenable or are held to be unnecessarily filed, the petitioner / workmen would stand reinstated w.e.f. 23.1.2015 with all consequential benefits is concerned, I am afraid, the said submission does not stand the test of law. Paragraph Nos.13 and 14 of the Jaipur Zilla Judgment (supra) is a clear answer to the submissions of Shri Sangeet. Paragraph Nos.13 and 14 read as under:-

“13. 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.

14. *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.”

23. Before the Apex Court, the issue was with regard to the effect of an application under Section 33(2)(b) being rejected or having not been filed. These two situations were on the basis of the undisputed position that Section 33(2)(b) was applicable to the case. It is in this backdrop, that the Apex Court concluded that when no application is filed or the one which is filed is withdrawn or the one which is filed is rejected, it would amount to the Tribunal not granting its approval. Therefore, the employee would stand to gain reinstatement with all consequential benefits and to acquire these benefits, the employee could then file a Complaint under Section 33A

of the ID Act.

24. In the instant case, considering the written statement of the petitioner / workmen, especially paragraph No.6 and the pending proceedings of 2010 under the Central Act, I have come to the conclusion that Section 33(2)(b) was not attracted at all. It is on these premises that I have concluded above that the Industrial Court should have disposed off the said applications. Hence, this conclusion would neither amount to the rejection of the approval applications, nor would it amount to the respondent / management having withdrawn these approval applications. When Section 33(2)(b) in itself was inapplicable, there can be no relief to be granted to the petitioners in these cases.

25. Shri Sangeet submits that since the petitioners had pointed out through their written statement that these approval applications were untenable and since this Court has come to a conclusion that the said applications were unnecessary, the management be directed to pay salary to the petitioner / workmen from 23.1.2015 to this date. Shri Hon has vehemently opposed the said request on the ground that the approval applications were filed by way of abundant precaution and to be on the safer side. It was for the Industrial Tribunal to accept the contention of the petitioners set out in paragraph No.6 of their Written Statement. If the Industrial Tribunal has permitted the litigating sides to proceed with the litigation, the respondent cannot be faulted.

26. In the light of the above, I do not find that the respondent / management could be held to be blameworthy for having been over cautious and having filed the approval applications by way of abundant precautions. As such, I do not find it proper to impose costs on the respondent or grant the monthly wages to the petitioners in these peculiar facts of this case.

27. In the light of the above, these petitions are partly allowed by concluding that since Section 33(2)(b) was not applicable in the case of these petitioner / workmen, the approval applications filed by the respondent / management were unnecessary and hence the impugned judgments of the Industrial Tribunal on the said approval applications would tantamount to adjudication of such applications which were not required to be filed. The said judgment shall, therefore, be of no assistance to the respondent / management and shall not be to the detriment of the interest of the petitioner / workmen. Being inconsequential, the impugned judgments are set aside.

28. Needless to state, in the light of the settled law, the petitioner / workmen have the legal right to challenge their individual termination / dismissal dated 23.1.2015, either under the Act of 1971 or under Section 2A of the ID Act. The filing of the approval applications on 23.1.2015 and the time spent by the petitioner / workmen from the said date till the passing of this order, would be a good ground for condonation of delay, in the event, they prefer their individual complaints or along with the Union under

the 1971 Act within 90 days from today and/or if there is an Industrial Dispute under the ID Act, 1947 before the competent authority / appropriate Government.

29. Rule is, therefore, made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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