

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 33563 of 2014 (U)

PETITIONER :

**FEDEX EXPRESS SERVICES (INDIA) PVT.LTD.,
(NOW KNOWN AS FEDEX EXPRESS TRANSPORTATION
AND SUPPLY CHAIN SERVICES (INDIA) PRIVATE LIMITED)
39/4706-A, PRAKASH COTTAGE, SRIKANDATH ROAD
RAVIPURAM, ERNAKULAM- 682 016
REPRESENTED BY ITS SENIOR MANAGER-OPERATIONS
MR.SUBRAMANIAN SAMBASIVAN.**

**BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.BENNY P. THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS**

RESPONDENTS :

- 1. MR. JOLLY V.N.,
S/O.NICHOLAS, VETTAPARAMBIL HOUSE,
CHERANELLOORE P.O.,
KOCHI- 682 034.**
- 2. THE DEPUTY LABOUR OFFICER,
ERNAKULAM CIVIL STATION, KAKKANAD,
KOCHI- 682 030.**

**R1 BY ADVS. SRI.ASHOK B. SHENOY
SMT.C.G.PREETHA
SRI.THOMAS P.MAKIL
SRI.K.V.GEORGE
SRI.P.N.RAJAGOPALAN NAIR
SRI.P.S.GIREESH**

R2 BY SR. GOVT. PLEADER SRI. BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-01-2015,
ALONG WITH WP(C) NO. 33564/2014 & WP(C) NO. 33565/2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:**

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...2/-

WP(C).No. 33563 of 2014 (U)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1: TRUE COPY OF THE APPROVAL APPLICATION (WITHOUT ITS
ENCLOSURES) DATED 15.03.2013 FILED CONCERNING THE 1ST
RESPONDENT.**
- EXT.P2: TRUE COPY OF THE PETITION DATED 03.02.2014 FILED BY THE 1ST
RESPONDENT UNDER SECTION 2A(2) OF THE INDUSTRIAL DISPUTES
ACT 1947.**
- EXT.P3: TRUE COPY OF THE ORDER DATED 31.03.2014 ISSUED BY THE 2ND
RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

K.Vinod Chandran, J.

W.P.(C).Nos.33563/2014-U, 33564/2014-U & 33565/2014-U

Dated this the 13th day of January, 2015

JUDGMENT

The petitioner in all the above writ petitions is the identical management, which challenges the order of the Deputy Labour Officer rejecting an approval sought for under Section 33(2) (b) of the Industrial Disputes Act, 1947 [for short “the Act”].

2. The brief facts necessary for adjudication is, that, pursuant to a strike, the Secretary of a Union was dismissed from service. A charter of demand was raised and the same was pending before the Conciliation Officer. When such charter of demand was pending conciliation, before the appropriate authority, three workmen impleaded respectively in the above writ petitions, were proceeded against for misconduct and were dismissed by separate orders dated 15.03.2013.

3. The management sought for approval, from the Deputy Labour Officer, which was declined. The Deputy Labour Officer found that approval cannot be granted, since the issue with respect to the sustainability of the dismissal was pending before

the Labour Court on reference, initiated by the workmen. Hence, approval was declined.

4. The learned counsel for the respective respondents in the writ petitions would, however, contend that the issue of approval does not at all arise, since two workmen involved herein are protected workmen and what would be applicable is sub-section (3) of Section 33. Hence, in their case, there is no question of approval under Section 33(2)(b) and a permission ought to have been sought, before the dismissal was given effect to. Similar contention is raised with respect to the other workman also; but, however, on the applicability to that workman; of the provisions of sub-section (1) of Section 33.

5. In any event, admittedly a dispute is pending, before the Labour Court, against the termination, on a complaint made by the respective respondents-workmen. All the issues could best be adjudicated before the Labour Court. With respect to the approval, in any event, it has to be noticed that the management has complied with the provisions under Section 33 (2) and in such circumstance, the approval could be granted; but,

however, subject to the final adjudication in the aforesaid case. It is also to be specifically observed that despite the approval granted, the respondents-workmen would be entitled to raise the question of their being covered under sub-sections (1) and (3) of Section 33 and in the event of their contentions being upheld by the Labour Court, necessarily the labour Court could pass consequential orders, *de hors* the approval granted by this Court. The approval granted by the Deputy Labour Officer also would have been subject to final adjudication by the Labour Court and the approval ordered in the above writ petitions, is only to avoid a further remand to the authority.

The writ petitions are disposed of, granting the approval; but, however, leaving open all contentions of either parties to be adjudicated before the Labour Court. Exhibit P3 orders in all the writ petitions are set aside.

Sd/-

K.Vinod Chandran
Judge

vkul/-

(true copy)