

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.17654 of 2015

Date of Decision: 25.08.2015

M/s Bellsonica Auto Component India Pvt. Ltd.

... Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ashwani Talwar, Advocate,
for the petitioner.

Ms. Abha Rathore, Advocate,
for the caveators.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

Heard Mr. Talwar for the petitioner management and Mrs.
Abha Rathore for the caveator respondent.

This petition has been filed under Articles 226 and 227 of the Constitution of India against an interim order arising out of the proceedings initiated by the petitioner management under Section 33(2) (b) of the Industrial Disputes Act, 1947 ('the Act') seeking approval of termination of the services of the respondent workman following an inquiry on the charge of misconduct levelled against the workman. The termination order cannot be given effect to except after approval of the authority before whom the dispute is pending which are any of the conciliatory or adjudication authorities or forums mentioned in Section 33 of the Act.

During the course of conciliation of the dispute the request
of the management to frame issues for trial with the view to support the

of inquiry proceedings of being fair and proper has been turned down by the Assistant Labour Commissioner (NCR) Gurgaon on 19th August 2015 by an elaborate order in writing. The Assistant Labour Commissioner while declining the prayer for according approval of action taken has held that proceedings under Section 33(2)(b) of the Act cannot be converted into a full-fledged trial by permitting framing of issues and calling evidence. The only threshold issues required to be examined in a summary fashion in approval proceedings is whether the object and purpose of Section 33(2)(b) of the Act has been abided by the management that termination does not stink of victimization and is not meted out as a measure of unfair labour practice. Section 33(2)(b) is designed by Parliament to prevent breach of both the pernicious habits.

In **Punjab National Bank Limited vs. Their Workmen**, AIR 1960 SC 160 the Supreme Court advised courts that in dealing with applications under Section 33 there are severe limitations placed on Tribunals that the consideration is only *prima facie* to grant permission or refuse it in the facts and circumstances of the case. The Supreme Court guided courts that in a proceeding under Section 33(b)(2) of the Act it is not open to the Tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity.

In **Lord Krishna Textiles Mills vs. Its workmen**, AIR 1961 SC 860, the Supreme Court observed that the extent of jurisdiction of a Tribunal in considering an application under Section 33(2)(b) of the Act cannot be wider than that conferred under Section 33(1). This principle applies to the Conciliation Officer as well where the conciliation

proceedings are pending to afford the protections law mandates for workmen involved.

The other pertinent rulings on the point which guide the authorities under the Act while dealing with approval proceedings are **Shankar Chakravarti vs. Britannia Biscuit Co. Ltd.**, 1979 AIR (SC) 1652, **Punjab Tractors Ltd. vs. Presiding Officer, Labour Court and another**, 2008(1) PLR 342 and **Sanghi Oxygen(Bombay) P. Ltd. vs. Madhav Koderi, Thane & anr.**, 1997(2) CLR 695. In the Division Bench ruling of this Court in **Meters and Instruments Pvt. Ltd. vs. Devi Dayal Sharma**, 1983 LIC 104 this court has commended the view that in approval proceedings all that the forum has to see is whether the action of the management is tinged with unfair labour practice or victimization. These are the only two aspects required to be examined in such proceedings. These two aspects have been elaborately examined by the Assistant Labour Commissioner (NCR) Gurgaon who I might say has done a rather commendable job in a well reasoned order after noticing the binding precedents on the subject matter. Nevertheless, the stage at which this petition has been preferred for court intervention at an interlocutory stage by refusing to frame issues claimed by the management is highly premature and not actionable. The stage of mediation or conciliation is a vital step in the scheme of the Act to help restore industrial peace and harmony by finding a workable solution to the dispute while it is short of court adjudication.

Since final orders have not been passed in the conciliation proceedings so far no interference is called for in the exercise of discretion based extraordinary writ jurisdiction against the impugned

order declining the request of the management to strike an issue to decide the question of the validity and fairness of the inquiry as a preliminary on upon which a trial should be held. Conciliation Officers exercise ameliorative administrative jurisdiction are not conferred with any judicial functions akin to courts of law. They adjudicate *no lis*. They are only mediators and if their effort fails to bring about an amicable settlement outside Section 33 then they can only be seen as authorities charged with *prima facie* quasi judicial power to grant stay orders refuse it when the action is oriented in the face of conciliation proceeding to keep managements under check against unfair, malafide and disproportionate disciplinary action in order to maintain the status quo ante. If their intrinsic work fails to settle the dispute then they are statutorily bound under Section 12 of the Act to record the reasons of failure and make a report to the appropriate government for it to consider making a reference of the dispute for adjudication by the Tribunal which itself is not a court but has only the trapping of a court.

I would, therefore, dismiss this petition without saying anything more, except what is said in support of the reasoning for the conclusion in this petition, so that neither of the parties is prejudiced in the making of the final report in the conciliation proceedings if they succeed or fail. However, nothing said in this order will influence the Additional Labour Commissioner (NCR) Gurgaon when he takes his final call. The issues involved are premature for expressing any final opinion of the dispute which are open to trial on merits.

25.08.2015**monika****(RAJIV NARAIN RAINA)
JUDGE**