

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Judgment delivered on: March 14, 2016

% **W.P.(C) No. 6426/2004**

HOTEL TAJ PALACE

..... Petitioner

Through: Mr. Vinay Bhasin, Sr. Advocate with
Ms. Poonam Das, Advocate.

versus

SHRI RAVI ROHILLA AND ANR.

..... Respondents

Through: Mr. Sanjoy Ghose, Advocate.

CORAM:

HON'BLE MR. JUSTICE I.S. MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The present petitioner, i.e., Hotel Taj Palace (*hereinafter referred to as the 'petitioner-management'*) has preferred the present Writ Petition under Article 226 read with Article 227 of the Constitution of India challenging the impugned order dated 19.12.2003 passed by the Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi (*hereinafter referred to as the 'learned Labour Court/Industrial Adjudicator'*) in O.P. No. 568/1993.
2. The brief facts stated are that the respondent-workman, i.e., Shri Ravi Rohilla, was appointed as General Tradesman w.e.f.

02.07.1985 on a monthly salary of Rs. 2631.50 per month with the petitioner-management. The petitioner-management on finding him absent from his duty for a period of 84 days on 43 occasions which is violative of service condition rules clause 31 (i) (42), i.e., Habitual absence without leave and absence without leave for more than seven consecutive days, issued a show cause notice dated 07.09.1992 to the respondent-workman. The petitioner-management after going through the explanation given by the respondent-workman dated 12.10.1992 did not find the reply satisfactory and initiated the inquiry proceedings against him. Thereafter, the inquiry officer submitted his report dated 15.10.1993 and held the respondent-workman guilty of the misconduct of unauthorised absence of 67 days during the period September, 1991 to August, 1992. The petitioner-management concurring the finding of the inquiry officer proceeded with dismissal order dated 19.11.1993 by moving an approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the learned Industrial Adjudicator in presence of a pending industrial dispute, i.e., I.D. No. 6/1992 between the management and the Union of workers of the management. The petitioner-management had remitted one month's wages to the respondent-workman vide money order receipts No. 0942 and 0943 dated 18.11.1993. However, the respondent-workman denied the allegations so put forward against him by the petitioner-management.

3. On the pleadings before the learned Industrial Adjudicator, the preliminary issue, i.e., *“Whether the applicant held a proper inquiry*

against the respondent?(OPA)” was framed and after giving fair opportunities to both the parties, the said issue was decided in favour of the petitioner-management and against the respondent-workman on 23.04.2003.

4. The learned Industrial Adjudicator thereafter, on the basis of the pleadings of the parties, further framed two issues, i.e.,

“(1) Whether the applicant remitted full one month’s wage to respondent as per provision of Section 33(2)(b) of the I. D. Act?

(2) Relief.”

and the learned Industrial Adjudicator after giving fair opportunity of evidence on the aforesaid issues to both the parties passed the impugned order dated 19.12.2003. Hence, giving rise to the present Writ Petition.

5. The petitioner-management aggrieved from the impugned order dated 19.12.2003 passed by the learned Industrial Adjudicator has filed the present Writ Petition on the following grounds:-

- I. The impugned order is perverse and contrary to law.
- II. The respondent-workman was dismissed from the service on 19.11.1993 after complying with all the legal provisions simultaneously forming part of the same transaction.
- III. The learned Industrial Adjudicator having found that the domestic inquiry conducted by the management was fair and proper should have accorded the approval of the petitioner-management’s action.

6. The learned counsel for the petitioner-management has submitted that the issue of inquiry was decided by the learned Industrial Adjudicator in favour of the petitioner-management. However, the learned Industrial Adjudicator went wrong in holding that compliance of full one month's wages has not been paid as per Section 33(2)(b) of the Industrial Disputes Act, 1947.
7. The learned counsel on behalf of the petitioner-management has further pointed out that one month's wages have factually been paid and sent through the money order vide receipts No. 0942 and 0943, which is evident from the dismissal order dated 19.11.1993 itself. The learned counsel for petitioner-management has further submitted that the finding of learned Industrial Adjudicator that the compliance under Section 33(2)(b) of the Industrial Disputes Act, 1947, i.e., remittance of one month's wages to the respondent-workman, is not complied with, is perverse and the same is liable to be set aside.
8. The learned counsel for petitioner-management has further submitted that the petitioner-management has performed all the legal obligations under Section 33(2)(b) of the Industrial Disputes Act, 1947 by sending the money order on 18.11.1993 and once the money order has been sent and the same being not disputed, it is deemed to have been received and complied with the legal provisions, therefore, no further action on the part of the petitioner-management remains to be done in compliance with Section 33(2)(b) of the said Act. Reliance is placed on the judgments of the Apex Court in the cases of *Calcutta State Transport Corporation vs. Md. Noor Alam*, AIR 1973 SC 1404, *M/s Strawboard Manufacturing Co. vs. Gobind*, AIR 1962 SC 1500,

P. H. Kalyani vs. Air France Calcutta, AIR 1963 SC 1756 and Management of Delhi Transport Undertaking vs. Industrial Tribunal, Delhi and Anr., AIR 1965 SC 1503 and further relied upon the judgments in the cases of *M/s Parle Products Pvt. Ltd. vs. Miss C. S. Saraswati and Ors., 1981 LIC 704 (BOM HC), M/s Hind Galvanising & Engineering Co. Pvt. Ltd. vs. The State of West Bengal & Ors., 1977 LIC 1416* and *The Management State Express Transport Corporation T. N. Ltd. vs. The Joint Commissioner of Labour, MANU/TN/0563/2012.*

9. On the other hand, the learned counsel on behalf of respondent-workman has submitted that the payment of one month's wages, which were required to be paid to the workman, were not paid and the petitioner-management is under legal obligation to discharge this onus. It is also submitted that under Section 33(2)(b) of the Industrial Disputes Act, 1947, the procedure has to be strictly followed in accordance with the provisions of the Act, and there is no other form which is acceptable under the Industrial Disputes Act, 1947.
10. The learned counsel for the respondent-workman has further submitted that the notice of termination and notice pay is required to be given simultaneously on the date of the termination and not earlier to that or subsequent thereto. The alleged remittance of wages is by money order dated 18.11.1993, whereas the date of termination is 19.11.1993. The learned counsel for respondent-workman relied upon the judgment of the Apex Court in the case of *Krishna Bahadur v. Purna Theatre and Ors, AIR 2004 SC 4282.*

11. The learned counsel for the respondent-workman has further submitted that the petitioner-management unless discharges its legal obligations for making payment of one month's wages simultaneously, employment of the respondent-workman cannot be taken away as it is a mandatory provision and relied on the judgments, i.e., *Ranjit Thakur vs. Union of India*, AIR 1987 SC 2386, *M. D. Tamil Nadu State Transport Corporation vs. Neethivilangan Kumbakonam*, 2001 LB. I. C. 1801, *Pramod Jha and Ors. vs. State of Bihar and Ors.*, AIR 2003 SC 1872, *Ashok Kumar Monga vs. UCO Bank & Ors.*, 1999 LLR 1171, *N. K. Sareen vs. Punjab National Bank*, 1994 LLR 676, *Taj Mahal Hotel vs. Industrial Tribunal-I & Ors.*, ILR (2010) Supp. (3) Delhi 503, *Indian Refrigeration Industries vs. Ram Rattan Sharma*, 128 (2006) DLT 503 and *Taj Mahal Hotel vs. Industrial Tribunal-I & Ors.*, 2015 LLR 1129.
12. The object of Section 33 of the Industrial Disputes Act, 1947 is to effectively achieve the object of protecting the workmen in an industry against the victimization or unfair labour practices, consistently with the preservation of the employer's bonafide right to maintain discipline and efficiency in the industry for securing maximum production in a peaceful and harmonious atmosphere, wherein, the dispute, if any, is to be adjudicated through summary procedure by adoption of approval of bonafide action of the management under Section 33(2)(b) of the said Act, in event of an industrial dispute pending between the parties, i.e., management and Union of workers of the management.

13. Instant is a case where I.D. No. 6/1992 is pending for adjudication between the management and Union of workers of the management.
14. Section 33(2)(b) of the Industrial Disputes Act, 1947, reads as under:-

“(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 ¹[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)...

(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.”

15. The petitioner-management alleges that the respondent-workman during the period September, 1991 to August, 1992 remained absent from duty for 67 days which is violative of service condition rules clause 31 (i) (42), i.e., Habitual absence without leave and absence without leave for more than seven consecutive days. Consequently, the petitioner-management issued a show cause notice *qua* against the respondent-workman. As the reply filed thereto was not satisfactory, the inquiry officer after giving due opportunity to

respondent-workman filed its report dated 15.10.1993 and found him guilty of the charge.

16. The petitioner-management during the process of bonafide approval of its action from the learned Industrial Adjudicator failed to satisfy the learned Industrial Adjudicator that one month's wages were sent through money order vide receipts No. 0942 and 0943 dated 18.11.1993 to the respondent-workman.

However, the petitioner-management succeeded in establishing the main issue that the inquiry carried out against the respondent-workman was fair and proper vide order dated 23.04.2003

but the respondent-workman did not prefer to challenge the said order. Meaning thereby, that the respondent-workman during the relevant period remained absent for 67 days, which is violative of service condition rules clause 31 (i) (42), i.e., Habitual absence without leave and absence without leave for more than seven consecutive days. Therefore, the judgments relied upon by the respondent-workman, i.e., *Ranjit Thakur vs. Union of India (Supra)*, *Ashok Kumar Monga vs. UCO Bank & Ors. (Supra)*, *N. K. Sareen vs. Punjab National Bank (Supra)*, *Taj Mahal Hotel vs. Industrial Tribunal-I & Ors (Supra)*, *Indian Refrigeration Industries vs. Ram Rattan Sharma (Supra)*, *Taj Mahal Hotel vs. Industrial Tribunal-I & Ors. (Supra)* and *M. D. Tamil Nadu State Transport Corporation vs. Neethivilangan Kumbakonam (Supra)* loses its significance in the present context.

17. The Apex Court in case of *M/s Strawboard Manufacturing Co. vs. Gobind (Supra)* has held that the employer while dismissing or

discharging the employee from the employment must remit one month wages along with approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 forming part of the same transaction.

18. Further, the Apex Court in the case of ***P. H. Kalyani vs. Air France Calcutta (Supra)***, while interpreting Section 33(2)(b) of the Industrial Disputes Act, 1947, has held that the dismissal order dated May 28, 1960 and its communication to the workman on May 30, 1960, wages offered to the workman on the same day was treated to be a valid compliance under Section 33(2)(b) of the Industrial Disputes Act, 1947.
19. Thereafter, the Apex Court in the case of ***Management of Delhi Transport Undertaking vs. Industrial Tribunal, Delhi and Anr (Supra)*** simplified the proviso given under Section 33(2)(b) of the Industrial Disputes Act, 1947, by saying that the proviso does not mean that wages for one month should actually have been paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment for dismissal becomes effective. In this case, the tender was definitely made before the order of dismissal became effective and the wages would certainly have been paid if workman had asked for them. Consequently, there was no failure to comply with the provision in this respect.
20. Further, the Apex Court while dealing with the case of ***Calcutta State Transport Corporation vs. Md. Noor Alam (Supra)*** after following the same principle as laid down in the case of ***M/s Strawboard Manufacturing Co. vs. Gobind (Supra)*** has further

clarified that forming part of same transaction does not mean that all the three things mentioned in the *Strawboard Case (Supra)* should be done on the same day by the employer. A difference of day in doing one thing or other may not be of material consequence so long as the employer meant to do all things as part of one and same transaction.

21. In the present case, the petitioner-management dismissed the respondent-workman vide dismissal order dated 19.11.1993, which is reproduced as under:-

"TAJ PALACE INTERCONTINENTAL, NEW DELHI

November 19, 1993.

*Mr. Ravi Rohilla,
A-3-148, Janakpuri,
New Delhi.*

This has reference to the second show cause notice dated 05/11/93. Despite having received the notice you have not cared to submit your reply to the same.

The management has gone through the enquiry proceedings and the report of the Enquiry Officer. The charges found established against you are extremely grave in nature and the same warrant your dismissal from service. The management does not find any extenuating circumstance which may merit a lesser punishment. Please notice, therefore, that your stand dismissed from service with immediate effect. Since an industrial dispute is pending adjudication before Industrial Tribunal II and you seem to be the concerned workman in the said dispute, an application under Sec. 33-2(b) has been made seeking approval of the action taken against you. One month's wages as required under law has also been remitted to you vide Money Order on 18/11/93, vide MO receipt nos.0942 and 0943.

Please acknowledge receipt.

For THE TAJ PALACE INTER CONTINENTAL

Sd/-

SHASHANK WARTY

AREA GENERAL MANAGER”

The aforesaid dismissal order itself indicates that one month's wages which was required to be paid to respondent-workman as per provision under Section 33(2)(b) of the Industrial Disputes Act, 1947, was made through money order on 18.11.1993 vide money order receipts No. 0942 and 0943.

22. The dismissal order dated 19.11.1993 is the instrument of communication between the petitioner-management and the respondent-workman to communicate the respondent-workman that his due one month's wages as per Section 33(2)(b) of the Industrial Disputes Act, 1947, has already been complied with on 18.11.1993 for better abundant precaution.

23. The respondent-workman during the cross-examination has not denied that he has not been served with dismissal order dated 19.11.1993. The abovementioned dismissal order communicates sending of one month's wages vide money order receipts No. 0942 and 0943, the same is not specifically denied by the respondent-workman. What is denied by the respondent-workman is that he has not been paid Rs.520/-, i.e., excess amount which was never part of the wages given to the respondent-workman, which is admitted by the respondent-workman in his cross-examination and the same is reproduced as under:-

“...It is correct that I had not signed any settlement with regard to long term wage. It is

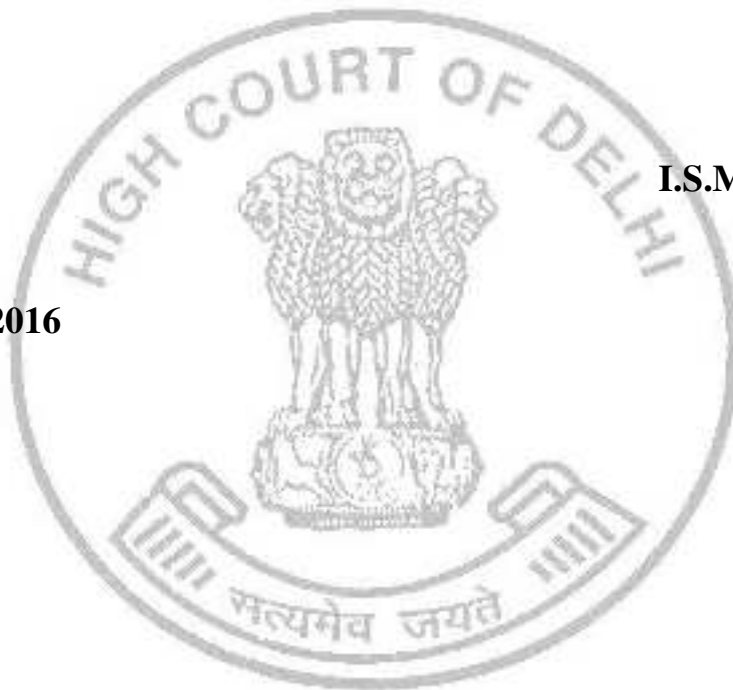
correct that management had not granted me the increment of Rs.520 as I had not signed the settlement...”

24. The aforesaid facts on record makes it clear that all the transactions which were carried out one after another are simultaneous and therefore, forming part of the same transaction and here, it is petitioner-management who too rather took active part in complying with the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947, on the preceding day by sending one month's wages to the respondent-workman so that he could receive the said one month wages on the day on which he receives the dismissal order dated 19.11.1993 along with the filing of an approval application under Section 33(2)(b) of the said Act before the learned Industrial Tribunal on the same day, i.e. 19.11.1993.

25. The finding of the learned Industrial Adjudicator that the payment made on 18.11.1993 to the respondent-workman is no payment in compliance with the Section 33(2)(b) of the Industrial Disputes Act, 1947 is contrary to the aforesaid legal provisions and the learned Industrial Adjudicator failed to appreciate that making of payment of one month's wages on 18.11.1993 to the respondent-workman which was communicated on 19.11.1993 through dismissal order along with the approval application under Section 33(2)(b) of the said Act, forms the part of same transaction. The judgments relied upon by the respondent-workman, i.e., ***Krishna Bahadur vs. Purna Theatre and Ors (Supra)*** and ***Pramod Jha and Ors. vs. State of Bihar and Ors. (Supra)*** loses its significance in the present context.

26. Consequently, the impugned order dated 19.12.2003 is set aside, resulting, allowing, the approval application under Section 33(2)(b) of the Industrial Disputes Act, 1947 of the petitioner-management *qua* against the respondent-workman. Consequently, the present Writ Petition is allowed. The Lower Court record be sent back with a copy of this Judgment. No order as to costs.

MARCH 14, 2016
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I.S.MEHTA, J