

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3132 OF 2006

Vinodchandra Keshavlal Shah .. Petitioner

V/s.

M/s. Manilal Patel & Company .. Respondent

Mr.S.M.Deshpande a/w Ms.Nivedita S. Deshpande & Ms.S.P.Munshi for
the petitioner

Mr.K.S.Bapat a/w Mr.Jayesh Desai i/b M/s.Desai and Desai Associates
for the respondent no.1

CORAM : K. K. TATED, J.
DATE : FEBRUARY 3, 2017

PC.:

1 Heard the learned counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the
Petitioner complainant challenges the oral judgment dated 1.9.2006
passed by the Presiding Officer, Industrial Court, Mumbai in complaint
(ULP) No.253 of 1991 dismissing the same.

3 In the present proceeding, the petitioner was working with the
respondent Company w.e.f. 1.4.1981 as an Accountant. As the
petitioner remained absent from duty without giving any intimation,
the respondent issued show cause notice and charge-sheeted him. In a
charge sheet dated 13.2.1991 the following charges were framed
against the petitioner:

- a) Habitual absence without leave or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation;
- b) Willful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of superior.
- c) Habitual neglect of work, or gross or habitual negligence.”

4 Thereafter the petitioner was again charge-sheeted on 16.9.1991 for remaining absent without any intimation. In that charge-sheet following charges were framed against the petitioner:

- a) Habitual absence without leave or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation;
- b) habitual breach of any Standing Order or any law applicable to the establishment or any rules made thereunder;
- c) commission of any act subversive to discipline or good behaviour on the premises of the establishment.”

5 In the meanwhile, reference was made on 16.07.1991 to the Central Government Industrial Tribunal No.1 at Mumbai being Reference No.CGIT-59 of 1991 for following issues:

“Whether the management of M/s.Manilal Patel and Co. operating as Clearing and Forwarding Agent in major part of Bombay are justified in refusing to accept the charter of demands, Annexure-'A' of the Transport and Doc Workers'

Union, having their workmen as not port and dock workers?
If no, what relief the workmen are entitled to?”

6 As during pendency of the Reference, respondent issued dismissal order dated 24.10.1991, they preferred Approval Application No.CGIT-2 of 1991 in pending Reference no.CGIT – 59 of 1991 before CGIT No.1, Bombay. Thereafter the respondent filed application for withdrawal of the approval application on 16.4.1996 on the ground that the State Government is appropriate government, as petitioner filed complaint of unfair labour practice under section 9 and 10 of Schedule IV of the said Act before the Industrial Court at Mumbai being complaint No.253 of 1991. At the time of withdrawal application, Respondent relied upon the judgment of the Supreme Court in the matter of *(1) Punjab Beverages PLtd. vs. Suresh Chand & Anr. 2) Punjab Beverages PLtd. vs. Jagdish Singh & Anr., 1978 II L.L.J. 1.* That application was allowed by the Industrial Court on 18.4.1996. At the time of allowing the said application, the Industrial Court observed as under:

“I have heard both the sides, the application for approval was filed way back on 24.10.1991. By order dated 19.1.1995, this Tribunal held that the domestic enquiry against the workman was not legal and valid. However, the management prayed for permission to prove the charge before this Tribunal. Opportunity was given but no evidence was led. Last opportunity was granted on 12.3.1995 on payment of Rs.1000/- as costs. The management, now wants to withdraw the main application dated 24.10.1991/28.10.1991. This Tribunal cannot compel him to proceed with the application but in the grab of this application for withdrawal, the management cannot nullify the order dated 19.1.1995. With these observations, the application for withdrawal is granted and the application for approval dated 24.10.1991/26.10.1991 is dismissed Second Appeal withdrawn. The management shall pay Rs.500/- as costs to the other side.”

7 Thereafter, Respondent Company filed an application Exh. C-21 on 09.02.1999 contending therein that since the Petitioner was dismissed from service, the complaint under Item 9 of Schedule-IV of the Act was not maintainable and it should be dismissed as such. The Industrial Court below Exh. C-21 in complaint (ULP) No.253 of 1991 passed order on 9.4.2001 holding that upon the application for approval under Section 33(2)(b) being withdrawn, the order of dismissal would not remain in force and there being no order of dismissal at all, the complaint could not be dismissed at that stage.

8 The said order was challenged by the respondent before this court by preferring Writ Petition No.529 of 2002. That Writ Petition was partly allowed by order dated 11.3.2005. This court directed Industrial Court to dispose of complaint (ULP) No.253 of 1991 on merits. Court further observed that all the rights and contentions of the parties were kept open and clarified that the Industrial Court shall deny complaint upon its merits, uninfluenced by the observation contained in order dated 9.4.2001. Relevant portion of the said order reads thus:

“3. At the hearing of the Petition, the Petitioner states that it withdraws the application for the dismissal of the complaint Exh.B to the Petition and that all the rights and contentions of the parties may be permitted to be adjudicated upon by the Industrial Court at the hearing of the complaint. Since the Petitioner is not seeking to press the application for dismissal of the complaint at the present stage, the Petition does not really survive since all the issues between the parties will be adjudicated by the Industrial Court at the trial of the complaint. The application filed by the Petitioner (Exh.B) is accordingly dismissed as not pressed. In these circumstances, the Industrial Court is directed to dispose of Complaint (ULP) No.253 of 1991 on merits. All the rights and contentions of parties are kept open and it is clarified that the Industrial Court shall determine upon the merits of the complaint uninfluenced by the observations contained in the impugned

order dated 9th April 2001 which does not survive in view of the withdrawal of the application for dismissal. In this view of the matter, it is not necessary for the Court to deal with the points which have been raised in the petition including the maintainability of the complaint at the present stage. The Petition is accordingly disposed of. There shall be no order as to costs.”

9 Thereafter, both the parties lead evidence before the Industrial Court and placed on record relevant documents. On the basis of the pleading, the Industrial Court framed following issues for its determination:

<i>S.No.</i>	<i>POINTS</i>	<i>FINDINGS</i>
1	Whether the complainant has proved that the respondent have committed unfair labour practices under item nos.9 and 10 of Schedule IV of the MRTU and PULP Act, 1971	No
2	Whether the complainant is entitled to get relief as prayed for in the main complaint?	No
3	What order?	As per final order

10 Being aggrieved by the oral judgment dated 1.9.2006 passed by the Industrial Court the petitioner preferred the present petition under Article 227 of the Constitution of India.

11 The learned Counsel for the petitioner submits that the oral judgment dated 1.9.2006 passed by the Industrial Court is against justice, equity and good conscience and same is required to be set aside. He submits that in the present proceeding, during the pendency of the Reference before Central Government Industrial Tribunal, the respondent issued dismissal order dated 24.10.1991 and thereafter,

made application as Approval Application No.CGIT-2 of 1991. During the pendency of the proceeding before Central Government Industrial Tribunal, the respondent filed application for withdrawal of their Approval Application and same was allowed by the Industrial Court, observing that the order dated 19.1.1995 by which Tribunal held that the inquiry conducted by Respondent company was not fair and proper, cannot be nullified in view of the withdrawal application. He submits that the Industrial Court at the time of passing impugned judgment dated 1.9.2006 held that the order passed by the Central Government Industrial Tribunal was null and void for want of Jurisdiction. He submits that the Industrial Court failed to consider the fact that the order passed by Central Government Industrial Tribunal was not challenged by the respondent at all on its own merits. He further submits that apart from that, the respondent never made any application before Central Government Industrial Tribunal objecting jurisdiction. He submits that the order passed by the authority can be set aside either by higher court in appeal and or making appropriate application before the concerned authority. He submits that the Industrial Court cannot sit in appeal to set aside and or to give a finding of nullity in respect of the orders passed by Central Government Industrial Tribunal. Hence, the judgment passed by the Industrial Court is required to be set aside. In support of this contention, he relies on the judgment of the Apex Court in the matter of ***Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. vs. Shri Ram Gopal Sharma and Ors., 2002 (I) SCC 181***. The Apex Court held that if the authority refused to grant approval it obviously follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. He relies on paragraph 14 and 15 which reads thus:

“14. 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.

15. 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.”

12 The learned Counsel for the petitioner also relies on the judgement of the Apex Court in the matter of *Tata Iron and Steel Co. Ltd., vs. S.N.Modak, 1965 (3) SCR 411*. On the basis of these

submissions, the learned Counsel for the petitioner submits that the observation made by the Industrial Court in impugned judgment that the orders passed by Central Government Industrial Tribunal was null and void, against justice equity and good conscience and hence, said observation is required to be set aside.

13 The learned Counsel for the petitioner submits that in the present proceeding, the respondent restrained the petitioner from continuing his duty. He submits that though the respondent placed on record before the Industrial Court letters dated 23.11.1990, 5.12.1990 and 14.12.1990 to show that they called upon the petitioner to come and join his duty, same is contrary to facts. He submits that whenever petitioner tried to join his duty, the respondent prevented him. Hence, the petitioner by his letter dated 7.1.1991 informed the respondent that he was always ready to join his duty but the same was not allowed by the respondents.

14 The learned Counsel for the petitioner submits that the respondent failed to follow the due process of law for issuing dismissal order dated 24.10.1991. He submits that once the approval application filed by the respondent was withdrawn by them, in that case, dismissal order dated 24.10.1991 automatically goes. Hence, complaint filed by the petitioner before the Industrial Court for direction to the respondent to allow the petitioner to report and resume his duty with full back wages and with continuity of service w.e.f. 3.11.1990 was according to law. He submits that there was no question of challenging the termination order dated 24.10.1991. He further submits that the petitioner in his evidence specifically deposed that the respondent restrained him from attending his duty when he was reported for work on 3.11.1990. He further submits that the Industrial Court failed to

consider the fact that the respondent failed to bring on record any evidence and or documents in support of their charge sheet dated 16.9.1991 and inspite of that the Industrial Court dismissed the petitioner's complaint (ULP) No.253 of 1991 mainly on the ground that the proceeding before the Central Government Industrial Tribunal was without any jurisdiction.

15 The learned Counsel for the petitioner submits that in view of the above mentioned facts and the law laid down in the authorities cited, this Hon'ble Court be pleased to set aside the oral judgement dated 1.9.2006 passed by Industrial Court and direct the respondent to reinstate the petitioner with full back wages with continuity of service. He submits that during the pendency of the present litigation the petitioner already attained the age of super annuation. Hence, there is no question of directing the respondent to reinstate the petitioner with full back wages. He submits that instead of passing order for reinstatement with full back wages, the respondent may be directed to pay back wages of the petitioner with interest @ 12% p.a. within stipulated time. He submits that if the present petition is not allowed, irreparable loss and injury will be caused to the petitioner.

16 On the other hand, the learned Counsel for the respondent/company vehemently opposed the Writ Petition. He submits that petition as it was filed by the petitioner is required to be dismissed on the ground of non-joinder of the parties. He submits that the petitioner at the time of filing the complaint (ULP) No.253 of 1991 joined Shri Vashistha Manilal Patel as party respondent no.2 whereas the present petition was filed only against original respondent no.1 i.e. M/s. Manilal Patel and Company. He submits that this itself shows that the impugned order passed by the Industrial Court dated 1.9.2006 is

final against one of the party. Hence, the present petition is not maintainable as it is filed by the petitioner and same is required to be dismissed.

17 The learned Counsel for the respondent submits that in the present proceeding, by letter dated 24.10.1991 they terminated the petitioner's service after following due process of law. He submits that the said termination order dated 24.10.1991 was not challenged by the petitioner in the complaint filed by him under item 9 and 10 of Schedule IV of the said Act. He submits that in the complaint, petitioner made following prayers only:

- “a) It be declared that the respondents, their office bearers and their agents have engaged in and are engaging in unfair labour practices under item 9 and 10 of Schedule-IV of the Act.
- b) Respondents be directed to allow the complainant to report and resume on his duties with full back wages, other benefits and continuity of service w.e.f. 3.11.1990 till the complainant be allowed to report and resume on duties.
- c) Respondents be directed to pay full wages to the complainant w.e.f. 1.11.1990 till the complainant would be allowed to report and resume on duties.
- d) Respondents be directed to deposit the wages of complainant w.e.f. 1.11.1990 in the court.
- e) Respondents be directed to regularly deposit the wages of complainant for every month in the court before the 1st day of next month.
- f) Complainant be allowed to withdraw the above mentioned wages which would be deposited by the respondents in the court.
- g) Respondents be directed to immediately allow the

complainant to report and resume on duties.

h) Respondents be restrained from stopping the complainant from reporting and resuming on duties.

i) Respondents be directed to pay interest at the rate of 1 1/2% per month on the arrears of wages w.e.f. 1.11.1990.

j) Respondents be restrained from carrying out the work of complainant through anyone else.

k) Respondents be restrained from recruiting any person in the post of complainant.

l) Respondents be directed to pay Bonus to the complainant for the year 1990-91 in the same way the respondents have paid to other employees.

m) Cost and compensation to the complainant.

n) Interim and ad-interim reliefs in terms of above.

o) Any other reliefs which the Hon'ble Court deems fit and proper under the facts and circumstances of this case.”

18 The learned Counsel for the respondent submits that bare reading of the prayers made by the petitioner in the complaint shows that he failed to challenge the termination order dated 24.10.1991. Therefore, there is no question of allowing the present petition directing the respondent to reinstate the petitioner with full back wages.

19 The learned Counsel for the respondent submits that the respondent's auditor submitted report dated 27.10.1990. From the said report, respondent learnt that the petitioner misappropriated the respondent's fund. As soon as the report was submitted by the auditor, the petitioner discontinued attending the office. Hence, the respondent by their letters dated 23.11.1990, 5.12.1990 and 14.12.1990 called

upon the petitioner to report to the office failing which management will be constrained to take legal action. He submits that inspite of several letters, the petitioner failed and neglected to report respondent's office. Hence, the respondent issued charge-sheet dated 16.9.1991 for habitual absence without leave. In the said charge-sheet respondent specifically stated that earlier also they issued charge-sheet dated 13.2.1991 to the petitioner for unauthorised absence from 10.11.1990 till the date of issue of the charge-sheet. He submits that initially the petitioner raised objection about the service of charge-sheet dated 16.9.1991. He submits that during the course of cross-examination, respondent brought on record documentary evidence to show that the same was duly served on the petitioner through his wife. At that time, the petitioner admitted the service of the said charge-sheet. He submits that inspite of service of the charge-sheet dated 16.9.1991, petitioner failed and neglected to participate in the enquiry. Hence, the respondent after following due process of law and conducting enquiry issued dismissal order dated 24.10.1991. He submits that inspite of having knowledge about the dismissal order dated 24.10.1991, petitioner failed and neglected to challenge the said termination order either by separate complaint and or by carrying out appropriate amendment in pending complaint. Hence, the petitioner is not entitled to any relief in the present Writ Petition for reinstatement in service.

20 The learned Counsel for the respondent submits that the Transport & Dock Workers Union made application before the authority for accepting their charter of demand. Pursuant to the said application the competent authority made reference before the CGIT No.1/59 of 1991. He submits that during the pendency of the said reference, petitioner remained absent without any notice from 10.11.1990 to

13.2.1991. Hence, the respondent issued charge-sheet dated 13.2.1991 to the petitioner. He submits that because of pendency of the reference, respondent filed Approval Application for permission to dismiss the petitioner workmen. He submits that during the pendency of the said reference, the respondent filed application for withdrawal of the Approval Application on 16.4.1996 on the ground of appropriate government. He submits that as per the respondent's contention, the State was the appropriate government and not the Central Government. That application was allowed by the authority. He submits that being aggrieved by the observation made by the Reference Court, they preferred Writ Petition No.529 of 2002 in this court. That Writ Petition was disposed of by this court (Dr. D.Y.Chandrachud, J. as he then was) by order dated 11.3.2005 observing that the Industrial Court to dispose of complaint (ULP) No.253 of 1991 on its own merits without influencing by the observations contained in the order dated 9.4.2001. He submits that in view of the order dated 11.3.2005 passed by the High Court in Writ Petition No.529 of 2002, the Industrial Court decided the complaint (ULP) No.253 of 1991 on its own merits. Hence, there is no question of interfering with the impugned order.

21 The learned Counsel for the respondent submits that the Trial Court by its impugned order rightly held that the Reference Court had no jurisdiction to pass any order in favour of petitioner because the appropriate government in respect of the petitioner was State Government. The learned Counsel for the respondent submits that the jurisdictional issue can be raised at any stage. In support of his contention he relied on the judgement of the Apex Court in the matter of *Chief Justice of Andhra Pradesh and Others vs. L.V.A. Dixitulu and others, (1979) 2 SCC 34*. The Apex Court in this matter held that the issue of jurisdiction can be raised at any stage because the

same is required to be decided on the basis of the complaint only. The learned Counsel for the respondent relies on paragraph 13 and 24 of the said judgment which reads thus:

“13. Thereafter on September 19, 1975, a Committee was constituted under an order of the Chief Justice. It consisted of the Acting Chief Justice and two Judges (Madhava Reddy and Ramachandra Raju, JJ.) of the High Court. The Committee reviewed the service records of the servants and officers of the High Court who had reached the age of 50 years. The 1st respondent, Sri Dikshitulu had attained the age of 50 years on March 12, 1974. The Committee resolved to retire him prematurely, among others, in public interest. By an order, dated September 26, 1975, of the Acting Chief Justice, purporting to have been passed under Article 229 of the Constitution read with : Rule 19 of the Andhra Pradesh High Court Service Rules, Rule 3(2)(a) of Andhra Pradesh Liberalised Pension Rules 1961/Rule 292 of the Hyderabad Civil Service Rules and Rule 2(1) of A.P. Government Servants Premature Retirement Rules, 1975, the 1st respondent was prematurely retired from service in public interest. On April 8, 1976, he filed a Review Petition. The then Chief Justice rejected his Review Petition. The rejection was communicated to him by a letter, dated September 13 1,976.”

“24. As against the above, Shri Vepa Sarathy, appearing for the respective first respondent in C.A. 2826 of 1977 and in C.A. 278 of 1978 submits that when his client filed a writ petition (No. 58903) of 1976 under Article 226 of the Constitution in the High Court for impugning the order of his compulsory retirement passed by the Chief Justice, he had served, in accordance with Rule 5 of the Andhra Pradesh High Court (Original Side) Rules, notice on the Chief Justice and the Government Pleader, and in consequence, at the preliminary hearing of the writ petition before the Division Bench, the Government Pleader appeared on behalf of all the respondents including the Chief Justice and raised a preliminary objection that the writ petition was not maintainable in view of Section 6 of the Andhra Pradesh Administrative Tribunal Order made by the President under Article 371-D which had taken away that jurisdiction of the High Court and vested the same in the Administrative

Tribunal. This objection was accepted by the High Court, and as a result, the writ petition was dismissed in limine. In these circumstances-proceeds the argument-the appellant is now precluded on principles of res judicata and estoppel from taking up the position, that the Tribunal's order is without jurisdiction. But, when Shri Sarathy's attention was invited to the fact that no notice was actually served on the Chief Justice and that the Government Pleader who had raised this objection, had not been instructed by the Chief Justice or the High Court to put in appearance on their behalf, the counsel did not pursue this contention further. Moreover, this is a pure question of law depending upon the interpretation of Article 371-D. If the argument holds good, it will make the decision of the Tribunal as having been given by an authority suffering from inherent lack of jurisdiction. Such a decision cannot be sustained merely by the doctrine of res judicata or estoppel as urged in this case."

22 For the same point, advocate for the respondent relies on the judgment of the Apex Court in the matter of *Harshad Chiman Lal Modi vs. DLF Universal Ltd. And Another*, (2005) 7 SCC 791. Paragraphs 4 and 13 which read thus:

"4. On December 09, 1988, a single Judge of the High Court of Delhi granted interim injunction in favour of the plaintiff. A common written statement was filed by both the defendants on March 29, 1989 controverting the claim of the plaintiff on merits. So far as jurisdiction of the court was concerned, it was clearly admitted and in paragraphs 18 and 19 it was stated that "jurisdiction of this Hon'ble Court is admitted". In view of increase in pecuniary jurisdiction of the District Court, Delhi, the suit came to be transferred from High Court of Delhi to District Court, Delhi on July 12, 1993 and it was re-numbered as Suit No. 1036 of 1994. On February 17, 1997, the trial court framed issues which did not include issue as to the jurisdiction of the court obviously because jurisdiction of the court was not disputed by the defendants. As late as on August 22, 1997, i.e. after more than eight years of the filing of the written statement, the defendants filed an application under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the

"Code") seeking amendment in the written statement by raising an objection as to jurisdiction of Delhi Court to entertain the suit. It was stated that the suit was for recovery of immovable property situated in Gurgaon District. Under Section 16 of the Code, such suit for recovery of property could only be instituted within the local limits of whose jurisdiction the property was situated. Since the property was in Gurgaon, Delhi Court had no jurisdiction in the matter. On January 16, 1998, the application was allowed and the written statement was permitted to be amended. The amended written statement was filed which also contained a statement that the jurisdiction of the court was "admitted". On the basis of the amendment of written statement, however, the learned Additional District Judge framed an additional issue as under :

"Whether Delhi Civil court has jurisdiction to try and entertain the present suit: OPD"?"

"13. Mr. Rohatgi, Senior Advocate appearing for the respondents, on the other hand, supported the order passed by the trial court and confirmed by the High Court. He submitted that the suit relates to specific performance of agreement relating to immovable property. In accordance with the provisions of Section 16 of the Code, such suit can be instituted where the immovable property is situate.

"16. Suits to be instituted where subject-matter situate.-- Subject to the pecuniary or other limitations prescribed by any law, suits--

- (a) for the recovery of immovable property with or without rent or profits,
 - (b) for the partition of immovable property,
 - (c) for foreclosure, sale or redemption in the case of a mortgage or charge upon immovable property,
 - (d) for the determination of any other right to or interest in immovable property,
 - (e) for compensation for wrong to immovable property,
 - (f) for the recovery of movable property actually under distraint or attachment,
- shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain."

Admittedly the property is situate in Gurgaon (Haryana). Delhi Court, therefore, has no jurisdiction to entertain the suit which is for specific performance of agreement of purchase of a plot - immovable property - situate outside Delhi. According to the counsel, even if it was not contended by the defendants that Delhi Court had no jurisdiction or there was an admission that Delhi Court had jurisdiction, it was totally irrelevant and immaterial. If the court had no jurisdiction, parties by consent cannot confer jurisdiction on it. The counsel also submitted that this is not a case in which two or more courts have jurisdiction and parties have agreed to jurisdiction of one court. According to Mr. Rohatgi, Section 20 of the Code would apply where two courts have jurisdiction and the parties agree as to jurisdiction of one such courts by restricting their right to that forum instead of the other.

20. Other suits to be instituted where defendants reside or cause of action arises.--

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendant where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or

the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institute; or
(c) the cause of action, wholly or in part, arises."

When Delhi Court had no jurisdiction whatsoever, no reliance could be placed either on Section 20 of the Code or on Clause 28 of the agreement. The order passed by the trial court and confirmed by the High Court is, therefore, legal and lawful and the appeal deserves to be dismissed, submitted the counsel."

23 The learned Counsel for the respondent submits that in view of the above mentioned facts, termination order remains as it is and as same was not challenged by the petitioner in the present proceeding, he is not entitled to any relief. The learned Counsel for the respondent submits that apart from these facts, Industrial Court decided the matter on its own merits holding that the petitioner remained absent without any notice nor he participated in enquiry conducted by the respondent as per charge-sheet dated 16.9.1991. Hence, there is no substance in the present Writ Petition and same is required to be dismissed with costs.

24 I have heard both the sides at length. After hearing both the sides, point arise for consideration is, "whether the petitioner made out a case for setting aside the impugned judgment dated 1.9.2006 in complaint (ULP) No.253 of 1991 directing respondent to reinstate the petitioner in its original post with full back wages?"

25 On the basis of pleadings, the Industrial Court framed following issues in the matter which reads thus:

ISSUES**FINDINGS**

- | | |
|---|----------------------|
| 1) Whether the complainant has proved that the respondents have committed unfair labour practices under items nos.9 and 10 of Schedule-IV of the MRTU & PULP Act, 1971? | "No" |
| 2) Whether the complainant is entitled to get the reliefs as prayed for, in the main complaint? | "No" |
| 3) What order? | "As per final order" |

26 In present proceeding, the respondent issued charge sheet dated 13.2.1991 to the petitioner for not reporting on duty for the period 10.1.1990 to 13.2.1991. At that time, the Reference CGIT No.59 of 1991 was pending before the CGIT No.1, Maharashtra at Mumbai. The respondent filed Approval Application as required by law. During the pendency of the said Approval Application, respondent realised that the appropriate government in the present proceeding was State of Maharashtra and not Central Government. Hence, the respondent filed application for withdrawal of the Approval Application. That application was allowed conditionally. Those conditions were set aside by this court (Dr.D.Y.Chandrachud, J. as he then was) by order dated 11.3.2005 in Writ Petition No.529 of 2005. It is to be noted that the effect of withdrawal of the application for approval with condition shows that the termination order dated 24.10.1991 remained intact. That termination order was not challenged by the petitioner before the appropriate authority and or not amended the complaint. This itself shows that the reliefs claimed by the petitioner in complaint (ULP) No.253 of 1991 cannot be granted according to law.

27 In the matter of ***Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. vs. Shri Ram Gopal Sharma and Ors.***(Supra), the Apex Court held that 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. In other words, the relationship comes to an end de jure only when the authority grants approval. As in the case in hand, the respondent by filing appropriate application withdrew the approval application. Hence, this authority is not applicable in the present case. For similar reason, the authority relied by the petitioner in the matter of *Tata Iron and Steel Co. Ltd., vs. S.N.Modak* (Supra) is also not applicable. Hence, the objection raised by the petitioner of the observation made by the Trial Court for setting aside the orders passed by CGIT No.1 in Reference CGIT NO.59 of 1991 cannot be sustainable.

28 In the present proceedings, respondents terminated the petitioners service by order dated 24.10.1991 after issuing charge-sheet dated 16.9.1991 for remaining absent without intimation and that termination order was not challenged by the petitioner. Unless and until the termination order is set aside, petitioner is not entitled to any relief in the present proceeding. The learned Counsel for the respondent rightly pointed out why the petitioner remained absent from service. He submitted that their auditor submitted the report dated 27.10.1990 showing the irregularities committed by the petitioner and since then the petitioner remained absent from his duty. Though the respondent by several letters called upon the petitioner to resume his duty, he failed and neglected to do so. Hence, for want of challenge to termination order dated 24.10.1991 petitioner is not entitled to any relief in the present proceeding.

29 There are other several points raised by the Petitioner. It is not necessary to consider the same because in any case, Petitioner is not entitled to order for reinstatement, as he failed to challenge the

dismissal order itself. Considering these facts and the law declared hereinabove, following order is passed:

- a) Writ Petition stands dismissed.
- b) Rule discharged.

JUDGE