

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.14073, 14076, 14079, 14082, 14087,
14089 and 14093 of 2019
and WMP.Nos.14124, 14129, 14133, 14136, 14142, 14145
and 14148 of 2019

M.Sekar	.. Petitioner in W.P No.14073 of 2019
T.Venkatesan	.. Petitioner in W.P No.14076 of 2019
D.Mohankumar	.. Petitioner in W.P No.14079 of 2019
B.Mohan	.. Petitioner in W.P No.14082 of 2019
S.Ashok Kumar	.. Petitioner in W.P No.14087 of 2019
S.Ekambaram	.. Petitioner in W.P No.14089 of 2019
M.Gajendran	.. Petitioner in W.P No.14093 of 2019

Vs.

The Management
Midrange Components
Unit of Brakes India (Pvt) Ltd.,
No.42, Banavaram Road
Melvenkatapuram Village,
Perunkachee Post
Sholingar
Walaja Taluk
Vellore District.

..Respondent in
all the writ petitions

Common Prayer : Writ petitions filed under Article 226 of the
Constitution of India praying to issue a Certiorarified Mandmus,
after calling for the records pertaining to the order dated
08.04.2019 in I.A.No.3 of 2019 (7 cases) in I.D Nos.18, 14, 15,

16, 19, 21 and 17 of 2018 from the file of the Principal Labour Court, Vellore, quash the same and consequently, direct the learned Principal Labour Court, Vellore to take up the issue regarding violation of Section 33 (2) (b) as the first preliminary issue before taking up the other issues including the fairness of enquiry.

For Petitioner : Mr.V.Ajoy Khose
[in all WPs]

For Respondents : Mr.S.Ravindran, Senior Counsel
[in all Wps] for Mr.S.Bazeer Ahamed

C O M M O N O R D E R

The present writ petitions are filed challenging the order passed by the the Principal Labour Court, Vellore in I.A.No.3 of 2019 (7 cases) in I.D Nos.18, 14, 15, 16, 19, 21 and 17 of 2018.

2. The writ petitioners are workmen. The industrial dispute was raised challenging the order of dismissal imposed on the workmen based on the alleged misconduct. After raising the industrial dispute, the petitioners/workmen filed an interlocutory application with a prayer to decide the fairness of the enquiry as a preliminary issue. The Labour Court had already taken a preliminary issue in this regard and the adjudications are in progress. It is not disputed that the preliminary issue is posted for evidence. Under those circumstances, another interlocutory application was filed in I.A.No.3 of 2019 with a prayer to decide the issue regarding the non-adherence of the mandatory provisions under Section 33 (2) (b) of the Industrial Disputes Act which is fatal.

3. The leaned counsel for the writ petitioners made a submission that two separate interlocutory applications were filed one to decide the fairness of the enquiry and another petition to decide the preliminary issue regarding the non-adherence of the mandatory provision under Section 33(2)(b) of Industrial Disputes Act. However, the first interlocutory application was filed to decide the fairness of the enquiry and after some time, the second interlocutory application was filed to decide the validity of the termination order which was issued without complying with the provisions of Section 33 (2)(b) of I.D Act.

4. It is contended by the learned Senior Counsel appearing on behalf of the respondent that the second interlocutory application was filed, after allowing the first interlocutory

application by the Labour Court regarding the fairness of the enquiry as a preliminary issue.

5. The learned counsel for the writ petitioners reiterated that when there is no document to establish that the mandatory provision under Section 33(2)(b) of the I.D Act had been complied with, the workman need not wait unnecessarily and therefore, the interlocutory application has to be decided as a preliminary issue. Such a proposition is to be decided as a preliminary issue.

6. To substantiate the said contention, the learned counsel appearing for the writ petitioners relied on the judgement of the Hon'ble Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd v. Ram Gopal Sharma and others reported in (2002) 2 Supreme Court Cases 244 and he cited paragraphs 13 and 14 of the judgement which are extracted hereunder:

"The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000 or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of

Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already the pending industrial dispute. The protection afforded to a workman under the said provisions cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

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 that the employee continues to be in service as if the 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 the 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 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A 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 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the 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 33-A 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".

7. The Hon'ble Supreme Court, in paragraph 13 held that "The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. In paragraph 14, it is reiterated that "if the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the 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 the 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 at all".

8. Further, the Hon'ble Supreme Court had observed that 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 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2)(b).

9. Relying such observation of the Hon'ble Supreme Court, the learned counsel for the writ petitioners reiterated that the interlocutory application was filed with a prayer to decide the issue as a preliminary one with reference to Section 33(2)(b) of I.D Act is maintainable and the Labour Courts ought to have decided the same as a preliminary issue. The Labour Court rejected the interlocutory application on the ground that the first interlocutory application filed to decide the validity of the domestic enquiry was ordered and posted for evidence and under these circumstances, the Labour Court is erred in rejecting the interlocutory application.

10. The learned Senior Counsel appearing on behalf of the respondent/management disputed the contention by stating that every issue cannot be decided as a preliminary issue in the industrial dispute. It is an admitted fact that the writ petitioners had already filed an interlocutory application which was allowed by the Labour Court and accordingly, the fairness of the enquiry was taken as a preliminary issue and the case was posted for taking evidence. Under those circumstances, the writ petitioners had filed another interlocutory application to decide the validity of the termination order as a preliminary issue with reference to Section 33(2)(b) of I.D Act. Therefore, the Labour Court is right in rejecting the interlocutory application by granting liberty to the petitioners to adjudicate all these violations in the main dispute. The Labour Court has not rejected the grounds raised by the petitioners in the interlocutory application. Primarily, the Labour Court made a finding that all the grounds were raised in the main Industrial Dispute and the same can be adjudicated during the trial. The Labour Court in its considered order held that as far as the framing of preliminary issue is concerned, it should be shorten the length process of the trial proceedings. If the Labour Court considers the prayer of the petitioner to frame the preliminary issue regarding violation of Section 33(2)(b) of I.D Act, definitely it would prolong the trial proceedings. Even, in the adjudication of the preliminary issue itself, the trial proceedings would be delayed. So, the purpose of framing of the

preliminary issue would not be served. So, the Labour Court is not able to consider the prayer of the petitioner for framing preliminary issue regarding violation of Section 33 (2) (b) of I.D Act and accordingly, rejected the interlocutory application.

11. The learned Senior Counsel appearing on behalf of the Management cited three Judge Bench of the Hon'ble Supreme Court judgement in the case of D.P.Maheshwari v. Delhi Administration and others in (1983) 4 Supreme Court Cases 293 and the following observations are relied upon as extracted hereunder:

It was just the other day that we were bemoaning the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. We noticed how they would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to this Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. Industrial peace, one presumes, hangs in the balance in the meanwhile. We have now before us a case where a dispute originating in 1969 and referred for adjudication by the Government to the Labour Court in 1970 is still at the stage of decision on a preliminary objection. There was a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and

whether it will not lead to other woeful consequences. After all tribunals like industrial tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner and of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues".

12. This Court is of the considered opinion that there is no quarrel with reference to the legal principles settled by the Constitution Bench regarding the mandatory requirements contemplated under Section 33(2)(b) of I.D. Act. The Constitution Bench, in unequivocal terms held that the approval is mandatory with reference to the order of dismissal and on that ground, the order of dismissal is to be scrapped. More so, the judgement of the Hon'ble Supreme Court is binding on all the Courts as the judgements cited by the learned counsel for the writ petitioners is the judgement of the Constitution Bench of the Supreme Court and became a law under Article 141 of the Constitution of India.

13. However, the facts and circumstances as well as the legal principles are to be considered with reference to the issues raised in these writ petitions.

14. The adjudication made by the Hon'ble Supreme Court is regarding the consequences of non-compliance of Section 33(2)(b) of I.D. Act and not regarding raising of preliminary issue in an interlocutory application. Therefore, there is a distinction in respect of raising a ground which is legally sound and filing the petition requesting the Labour Court to decide such an issue as a preliminary issue. Such a distinction is necessary in order to avoid protraction and prolongevity of the litigations by the parties concerned.

15. For example, every grounds raised by the respective parties are important as far as the Courts are concerned. Courts are bound to examine, conduct enquiry and decide those grounds either factually or legally. Therefore, there cannot be another opinion in respect of the considered legal issue raised by the respective parties which are all supported by the

judgements of the Constitutional Courts across the country. However, whether such grounds can be raised as a preliminary issue even before conducting a trial or not is the issue to be considered in the present writ petitions.

16. For instance, the workman can raise various legal grounds to assail the order of dismissal, termination, discharge of service or retrenchment by pleading that the order of termination was issued without conducting another domestic enquiry, the dismissal was issued without complying with the mandatory provisions of the I.D Act. The termination order was issued by way of victimization and with an ulterior motive or on some other grounds which are all legally impermissible. However, if the workman are permitted to file an interlocutory application after interlocutory application on each such ground and insisting the Labour Court to raise the preliminary issue even before the conduct of the trial, this Court is afraid that such situation will be dangerous and the Courts may not be in a position to conduct a full fledged trial so as to decide the disputed issue with reference to the facts and circumstances of the case.

17. It is not as if the Court in some occasion can decide the legal validity based on one provision of law. Every provision of law exhibited with facts, is to be considered with reference to the documents filed / evidence taken by the Tribunal / Labour Court in this regard. If the principles are to be followed, this Court is of the opinion that every legal issue cannot be decided as a preliminary issue by the Labour Court or by the Tribunal. Only certain issues which are necessarily to be decided alone, can be decided.

18. Question arises to be considered is, as to what are all the necessary issues that can be decided as a preliminary issue. It is an established principle upheld by the Constitutional Courts. The fairness of the domestic enquiry can always be raised as a preliminary issue by filing an interlocutory application before the Labour Court and in fact, such an issue must be decided by the Labour Court if sought for by the parties concerned. If the domestic enquiry was held as improper, not just or otherwise, then the Labour Court is duty bound to conduct an enquiry itself by examining evidences and documents. Even such an enquiry is subject to the objections to be raised if any by the parties concerned. Therefore, there is a purpose for deciding the fairness of the domestic enquiry as preliminary issue. The very purpose is to conduct an enquiry with reference to the charges proved or not proved against the workman concerned. Under those circumstances, the Apex Court has held that the Labour Court should decide the fairness of the enquiry as a preliminary issue. That does not mean each and every legal

ground to be decided as a preliminary issue and such an event, the entire process of trial is not only neutralised and the purpose for which the trial conducted is also defeated.

19. Under these circumstances, this Court has no hesitation in coming to the conclusion that the Labour Court has right in proceeding with the preliminary issue regarding the fairness of the domestic enquiry and such an issue is to be decided at the first instance and subject to the decision in the preliminary issue, all further proceedings sought to be conducted by following the procedures contemplated. As far as the other legal grounds are concerned, parties are refrained from insisting the Labour Court to decide those legal issues as a preliminary issue, such an event, now the trial cannot be frustrated and the scheme of I.D Act will be defeated. Always disputed issues are to be decided by way of full fledged trial. This being the general rule, such exception is for the Court to decide the preliminary issue in order to ensure that certain proceedings including enquiry are conducted in a just and fair manner.

20. Under such circumstances, the finding of the Labour Court is in consonance with the legal principles applicable to the facts and circumstances of this case is concerned and therefore, the order passed by the Labour Court, Vellore, in I.A No.3 of 2019 (7 cases) in I.D Nos. 18, 14, 15, 16, 19, 21 and 17 of 2018 is confirmed and the present writ petitions are deserves to be dismissed.

21. Accordingly, these Writ Petitions are dismissed. No costs. It is made clear that the Labour Court shall proceed with the issues and dispose of the I.Ds as expeditiously as possible, in view of the fact that the petitioners have raised certain legal grounds which are all to be considered based on the facts and circumstances of the case as well as based on the materials to be placed before the Labour Court by the respective parties. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS-III)

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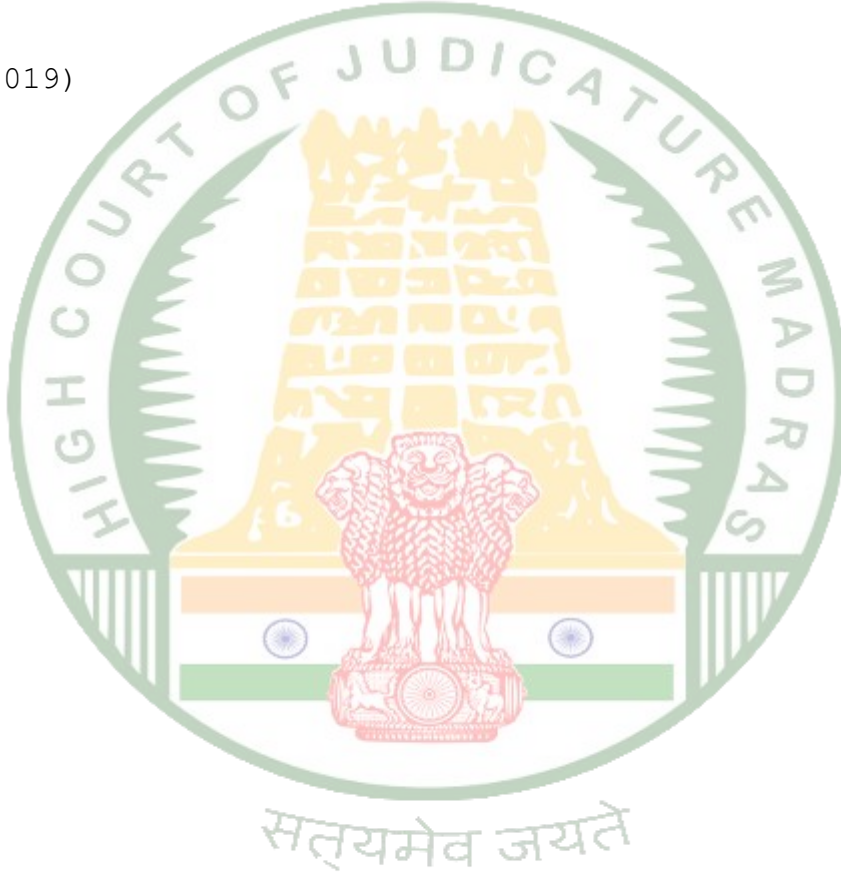
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+1 CC to Mr.S.Bazeer Ahamed, Advocate sr 95319.
+1 CC to Mr.V.Ajoy Khose, Advocate sr 95019.

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VSNI I (CO)
SP (26/12/2019)



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