

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

L.P.A. No.628 of 2018 (O&M) in
Civil Writ Petition No.10832 of 2014
Reserved on : October 31, 2019
Date of decision: March 04, 2020

M/s Maruti Suzuki India Limited ...Appellant

Versus

Lal Chand and another ...Respondents

AND

2. L.P.A. No.629 of 2018 (O&M) in
Civil Writ Petition No.15980 of 2014

M/s Maruti Suzuki India Limited ...Appellant

Versus

Lal Chand and another ...Respondents

ORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.D.S.Patwalia, Senior Advocate assisted by
Mr.Harsh Mehla, Advocate for the appellant.

Mr.Ashwani Bakhshi, Advocate for respondent No.1.

HARINDER SINGH SIDHU, J.

1. This judgment shall dispose of two Letters Patent Appeal Nos.628 of 2018 and 629 of 2018, both filed against the common judgment dated 12.12.2017 whereby, CWP Nos.10832 of 2014 and 15980 of 2014, filed by respondent No.1 were allowed.

2. In CWP No.10832 of 2014 respondent No.1 Lal Chand had challenged the validity of the award dated 01.04.2014 of the Industrial Tribunal-cum-Labour Court, Gurgaon in Reference No.739 of 2003 under 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as “ID Act”), while in CWP No.15980 of 2014, he challenged the order dated 01.04.2014 of the Ld. Tribunal in application No.01 of 2003 under Section 33-2(b) of ID Act.

3. Respondent No.1 was appointed as Assistant (Store) in the appellant Company on 24.11.1984. He worked as such till 28.05.1991 when he left the job and took up an assignment with the Educational Consultant of India (Ministry of HRD) as Senior Executive Assistant (Administration and Purchase). He rejoined the appellant Company on 03.02.1992. He was confirmed on the post of Assistant L-5. He was promoted from L-5 to L-6 on 01.04.1994, from L-6 to L-7 on 01.04.1997 and from L-7 to L-8 on 01.04.2000. On 15.02.2001 a transfer order was issued regarding transfer and posting of 63 employees including respondent No.1. Vide the aforesaid transfer order respondent No.1 who was working in the Spare Part Accessory Department was transferred to the Assembly Department as Technician L-8. The issue of the transfer of the workers by the appellant Company vide order dated 15.02.2001 was taken up by the Maruti Udyog Employees Union. On 17.02.2001 the Employees Union passed a resolution deciding to raise an industrial dispute with regard to the transfer of various employees including respondent No.1. The Union served a demand notice dated 19.02.2001 on the Management demanding

that the transfer of employees effected by order 15.02.2001 be cancelled forthwith. Copy of the Demand Notice was sent to Labour Commissioner, Haryana, Additional Labour Commissioner, Haryana and Assistant Labour Commissioner, Gurgaon. The Conciliation proceedings between the Management and the Union were not fruitful. The Deputy Labour Commissioner, Gurgaon submitted a failure report on 22.08.2001.

4. Respondent No.1 individually also represented against his transfer on the ground that he had been appointed on the administrative side whereas he had been transferred to the technical side. On 15.10.2001 he was transferred to Regional Office, Guwahati as Assistant. Initially, he joined at Guwahati but later absented himself. He submitted his representation/objections dated 16.10.2001 and 30.01.2002 against his transfer to Guwahati. He was served with a charge sheet on 02.11.2002 on account of continuous absence from duty, to which he submitted his reply on 12.11.2002. An Enquiry Officer was appointed. As Respondent No.1 did not join the enquiry proceedings, he was proceeded against ex-parte. Report of the Enquiry Officer was supplied to him, to which he filed his reply on 26.04.2003. After considering the reply, he was dismissed from service on 26.08.2003.

5. Meanwhile, as the dispute raised by the Employees Union regarding the transfer was not referred by the State Government, Respondent No.1 filed CWP No.16938 of 2002, seeking reference of the industrial dispute relating to his illegal transfer to the Labour Court for adjudication. This petition was disposed of vide order dated 22.10.2002

with a direction to the competent Authority to take a decision on the demand notice. Thereafter, the Government/ Competent Authority passed an order dated 01.01.2003 declining to make the reference. Respondent No.1 filed CWP No.1393 of 2003, seeking quashing of the order dated 01.01.2003 declining to make the reference. During pendency of this petition, the dispute was referred to the Industrial Tribunal vide order dated 16.07.2003, which reads as under:-

**“HARYANA GOVERNMENT
LABOUR DEPARTMENT
ORDER**

Whereas Governor of Haryana is of the opinion that in the matter between M/s Maruti Udyog Ltd., Gurgaon and Maruti Udyog Employees Union (Regd.No.978) (now deregistered) relating to Shri Lal Chand, House No.601, Kapashera, New Delhi-37 and his management there is certain industrial dispute in the following cited matter and whereas Governor of Haryana considers it expedient to refer the same for adjudication.

Therefore, now in exercise of the powers conferred under Sub Section (1)(c) of Section 10 of Industrial Disputes Act, 1947 as amended from time to time, direct Industrial Tribunal, Gurgaon constituted under Section 7(a) of aforesaid Act to decide and dispose the below mentioned subject, which is either disputed matter/matters or matter/matters concerned with the dispute, within a period of 6 months.

Whether the transfer of workman Sh. Lal Chand, Assistant, performing office work, to other Section by the management is legally justified? If not, to what relief he is entitled to?

Sd/-

Dated:16.7.2003

Prem Prashant

*Financial Commissioner & Principal Secretary
Government of Haryana
Labour and Employment Division”*

Accordingly, CWP No.1393 of 2003 was disposed of as having become infructuous.

6. Before the Labour Court, the appellant Company had taken up the plea that the reference which was in relation to the transfer of Respondent No.1 did not constitute an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 as the same had not been espoused by the workmen of the establishment but had been raised by Respondent No.1. An individual workman could raise a dispute only pertaining to dismissal, discharge, retrenchment or termination which would be an industrial dispute within the meaning of Section 2-A of the ID Act. Hence, it was contended that the reference was not maintainable. The Ld. Labour Court accepted the contention of the appellant. It passed award dated 01.04.2004, holding that the dispute was in relation to transfer of Respondent No.1 and it had not been raised by the Employees Union, hence it was not covered within the definition of industrial disputes. The Labour Court concluded that it had no jurisdiction to adjudicate the case. CWP No.10832 of 2014 was filed by Respondent No.1, impugning the aforesaid award of the Labour Court.

7. In view of the fact that before the passing of the order of dismissal/ termination of Respondent No.1 dated 26.08.2003, the dispute had been referred to the Industrial Tribunal on 16.07.2003, the appellant moved an application under Section 33(2)(b) of the ID Act before the Industrial Tribunal seeking approval of the order of dismissal dated

26.08.2003. Respondent No.1 filed a detailed reply to that application contending that departmental proceedings had been illegally initiated against him. The enquiry had not been conducted in accordance with law and that he had been illegally dismissed from service. The Ld. Labour Court dismissed the application as not maintainable vide order dated 01.04.2014 in view of its finding in the reference under Section 10(1)(c) of the ID Act that it had no jurisdiction to go into the same as the reference did not constitute a valid industrial dispute. CWP No.15980 of 2014 had been filed by Respondent No.1, impugning the aforesaid decision of the Labour Court holding the application under Section 33(2)(b) of the ID Act to be not maintainable.

8. Both the petitions were disposed of vide the common impugned judgment. The Ld. Single Judge held that from the record it was clear that the Employees Union passed the resolution dated 17.02.2001 against the transfer of its members. A demand notice was issued on 19.02.2001. In both these documents the name of Respondent No.1 was reflected. Thus, it was clear that the Employees Union had espoused the cause of Respondent No.1 in respect of his transfer. Even the appellant Management had taken note of this fact that the Employees Union had espoused the cause of Respondent No.1. Accordingly, it was held that the Award of the Labour Court in holding the reference to be not maintainable for not being espoused by the Employees Union was manifestly contrary to the record. Hence, the award of the Labour Court dated 01.04.2014 passed in Reference No.739 of 2003 was set aside. The order dated 01.04.2014 of

the Ld. Labour Court passed in the application under Section 33(2)(b) of the ID Act being consequential upon its finding regarding the reference being not maintainable, was also set aside. The matters were remanded to the Labour Court to decide the reference No.739 of 2003 under Section 10 (1)(c) of the ID Act and reference No.1 of 2003 under Section 33(2)(b) of the ID Act, afresh.

9. The findings of the Ld. Single Judge regarding the cause of the transfer having been espoused by the Employees Union are based on the record, namely, the Employees Union passed the resolution dated 17.02.2001 against the transfer of its member and it further served a demand notice dated 19.02.2001. In both these documents, the name of Respondent No.1 was there. Hence, these findings are unassailable. It is also noteworthy that even from the reference order dated 16.07.2003 (reproduced above), it is clear that the reference has been made on the demand of the Maruti Udyog Employees Union. The fact that the said Union has been de-registered subsequent to the issue of the demand notice may not be material as this would not negate the fact that at the relevant time when the dispute was raised the Union was registered .

10. Ld. Counsel for the appellant had argued before the Ld. Single Judge as also in these appeals that the writ petitions had become infructuous as Respondent No.1 had been dismissed from service on 26.08.2003 and he had not challenged his dismissal. The Ld. Single Judge rightly negated this contention by holding that the writ petitions could not be considered as having become infructuous solely on account of

Respondent No.1 not challenging the order of dismissal.

11. The dispute before the Ld. Labour Court pertained to the transfer of Respondent No.1 to Guwahati against a technical post, whereas he had been appointed on a non-technical post. The Ld. Single Judge held that the reference had been validly made and the said findings have been affirmed by us.

12. Further issue before it was the application under Section 33(2) (b) of the ID Act for approval of the order dated 26.08.2003 dismissing/terminating the services of Respondent No.1 after the dispute had been referred to the Labour Court vide order dated 16.07.2003.

13. Hon'ble Supreme Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma, (2002) 2 SCC 244** has held that the proviso to Section 33(2)(b) is mandatory. 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, the employee continues to be in service as if the order of discharge or dismissal had never been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee remains inchoate till approval is granted under the said provision. If approval is not given it will have to be deemed that the order of discharge or dismissal had never been passed. In that event, the

employee is deemed to have continued in service entitling him to all the benefits available. If approval is given by the authority, the relationship comes to an end from the date of the order of dismissal.

The relevant observations are as under:

“13. 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 pending industrial dispute. The protection afforded to a workman under the said provision 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 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. 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.”

14. Clearly, the order of dismissal of Respondent No.1 would take effect only on its approval by the Industrial Tribunal/ Labour Court. Thus, the fact that respondent No.1 did not in separate proceedings challenge the order of dismissal was not material and would not render the proceedings as infructuous.

15. Accordingly, there is no merit in these appeals and the same are dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 04, 2020
gian

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No