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

Date of Decision:- 24.01.2020

+ LPA 50/2020, CAV 60/2020 & CM APPL. 2781-2783/2020

THE MANAGEMENT OF BIRLA TEXTILES Appellant

Through: Dr. M.Y. Khan, Advocate.

versus

RAM SAWROOP

..... Respondent

Through: Mr. Vinay Sabharwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J (Oral):

1. The present appeal under Clause –X of the Letters Patent is directed against the final judgment dated 19.11.2019 passed by learned Single Judge in W.P. (C) No. 2814/2007, whereby the writ petition preferred by the appellant to assail the award dated 29.01.2007 passed by the Industrial Tribunal in OP No. 94/2005, (on the appellant's application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "ID Act") seeking approval of its dismissal order dated 28.03.1985), has been rejected.

2. The brief facts taken note of by the learned Single Judge in impugned order are that the respondent/workman joined the services of the

appellant/Mill in October, 1990. He became a member of the Textile Mazdoor Congress (Regd.). On 12.01.1994, he was issued a charge-sheet alleging that he alongwith 30 other workmen had, on 10.01.1984 at about 11.30 a.m., forcibly entered the administrative block and misbehaved with one Mr.Hemant Kumar, the Chief Executive Officer of the Mill, because transfer orders were issued in their names upon closure of the appellant's weaving section. The appellant also alleged that the errant workmen had continued with their *gherao* of Mr. Hemant Kumar till 6:30 p.m. and also stopped the Labour Officer from entering the premises. The respondent/workman denied his presence at the site on the date of the incident. This led to institution of departmental enquiry against him. The enquiry proceedings were not completed and as there were successive change in the Inquiry Officers. However, the respondent alongwith 30 other workmen-who were accused of involvement in the aforesaid incident, were dismissed from service on 28.03.1985. Thereafter, the appellant moved the application under Section 33(2)(b) of the ID Act before the Tribunal seeking approval of the dismissal order dated 28.03.1985, since the matter was already pending before the Tribunal . The respondent contested the said approval application and claimed that the entire incident was fabricated by the appellant since the appellant was looking for a reason to oust him and the other union members from service. He also claimed that the appellant had not even remitted one month's salary to him, which was a necessary precondition for filing an approval application under Section 33(2)(b) of the ID Act. Admittedly, the same Industrial Tribunal was also seized of the reference of the industrial dispute raised by the workman against his dismissal. The Tribunal framed the following issues for its determination:

“1. Did the respondent indulge in violence activities and gheraoed Shri Hemant Kumar, Chief Executive?”

2. Is the applicant entitled to approval of dismissal of the respondent?”

3. In an identical appeal [LPA 34/2020] filed by another employee, this Court had the occasion to consider exactly the same contentions as are urged in the present appeal. The facts in the said case; issues framed in OP filed by the appellant; and; the decision of the Tribunal on the basis of evidence lead by the management are alike. Therefore, it would suffice to extract the findings rendered by us in the order dated 21.01.2020 disposing of the appeal as follows:

“3. The first issue was relevant for determination of both the appellant’s application under Section 33(2)(b) and the Industrial Dispute raised by the workman. The appellant produced two witnesses namely, Sh. Mahavir Prasad, the Industrial Relations Officer and Sh. Hemant Kumar, and also placed reliance on the police complaint dated 10.01.1984. The respondent examined himself as his sole witness. Upon consideration of the evidence, the Tribunal concluded that there was no proof of the respondent’s participation in the alleged incident dated 10.01.1984. Moreover, there was no evidence to show that the appellant had made payment of one month’s wages to the respondent in accordance with Section 33(2)(b) of the ID Act. The learned Single Judge has extracted in the impugned judgment the relevant findings returned by the Tribunal. They relate to the appreciation of the evidence led by the parties. On the basis of the aforesaid discussion, the Industrial Tribunal held that there was no prima facie evidence on record to show that the respondent/workman participated in the alleged incident on 10.01.1984. In fact, a perusal of the said discussion shows that

the Industrial Tribunal also doubted whether any such incident had actually taken place - as claimed by the appellant. The Tribunal also held that the appellant had failed to establish compliance of Section 33(2)(b) and, consequently, rejected the said application. By the award of the same date, i.e., 29.01.2007, the Industrial Tribunal allowed the claim of the respondent and held that the termination was illegal, and the same was set aside. The appellant was directed to reinstate the respondent with continuity of service and 50% back wages.

*4. The submission of learned counsel for the appellant, as raised before the learned Single Judge and also raised before us, is that the Industrial Tribunal should have disposed of the appellant's application under Section 33(2)(b) of the Act as well as the industrial dispute raised by the respondent by a common order. This submission of the appellant has been rejected by reference to the decision in **Jaipur Zila Sahakari Bhoomi Vikas Ltd. vs. Ram Gopal Verma (2002) 2 SCC 244**, wherein the Supreme Court held that once the employer's application for approval under Section 33(2)(b) was dismissed, the employee/workman was deemed to be in continuous service. Even if he did not raise an industrial dispute challenging his termination, the same would not alter the fact that his termination was non-est, being in violation of Section 33(2)(b) of ID Act.*

5. Learned counsel for appellant submits that when both the application under Section 33(2)(b) as well as the industrial dispute raised by the workman against termination are pending, the industrial dispute challenging the termination should be decided first, and only thereafter, the application for approval should be decided. He further submits that the respondent had attained the age of superannuation in January, 2009, since the retirement age in the mill was 60 years. Moreover he expired on 22.04.2015 and his legal heirs were substituted. Therefore, the direction for reinstatement with 50% back-wages was not sustainable.

6. We may deal with this submission first. If the respondent/workman had reached the age of superannuation by

the time the award was passed in favour of the respondent, it is obvious that the reinstatement would be effective from the date of termination till the date of superannuation. The award cannot be read to mean that the age of superannuation stands extended. Therefore, it cannot be said that the award for reinstatement could not be passed, merely because the workman may have superannuated and thereafter died in the meantime.

7. Learned counsel for the appellant has also argued that the mill had closed in the year 30.11.1996. However, that also is not a bar to direct the reinstatement of any illegal terminated/dismissed workman.

*8. The prime submission of the appellant taken note of hereinabove also has no merit. The proceedings under Section 33(2)(b) to seek approval, and the industrial dispute raised by the workman, are two sides of the coin. In fact, they were both pending before the same Tribunal and were also dealt with together. The order of rejection of the appellant's application under Section 33(2)(b), as well as the industrial award, have been rendered on the same date by the same presiding officer. The same substantial issue arose, and was framed by the Tribunal as taken note of hereinabove. There is no bar in law to the two proceedings being dealt with simultaneously. Learned Single Judge has rightly relied upon the decision in **Jaipur Zila Sahakari Bhoomi Vikas Ltd. (supra)**, which categorically holds that once the management's approval application is rejected, a necessary consequence thereof is that the termination/dismissal will not have any effect. Learned Singh Judge has also placed reliance on **Badshah Singh vs. Delhi Jal Board LPA No. 604 of 2014**, wherein a Division Bench of this Court has held that where the management's approval application is rejected, it would not even be necessary for the workman to raise a formal claim in this regard.*

9. We, therefore, do not find any merit in the present appeal. Accordingly, the appeal and the applications are dismissed."

4. Accordingly, following our earlier decision in LPA No. 34/2020, we dismiss the present appeal alongwith the pending applications for the reasoning noted in the paragraphs extracted above. No costs.

SANJEEV NARULA, J

VIPIN SANGHI, J

JANUARY 24, 2020

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