

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

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**CWP No. 15451 of 2015
Date of decision : 30.3.2022**

General Manager, The Tribune Trust, Chandigarh**Petitioner**

Vs.

**Presiding Officer, Industrial Tribunal and Labour Court, UT, Chandigarh
and another**

.....**Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Manu K. Bhandari, Advocate, for the petitioner
None for respondent No.2

Rajbir Sehrawat, J. (Oral)

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari for quashing Orders Annexures P-15 and P-16 (dated 18.3.2015), by which the applications filed by the petitioner under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (for short 'the Act') have been rejected. It is further prayed that operation of the above said orders be stayed during the pendency of the present petition.

It is submitted by counsel for the petitioner that respondent No.2 was working as Senior Care Taker at the Dharamshala Office of the petitioner. Another co-employee Ms. Nitu, who was engaged as Sweeper at that place, levelled an allegation against respondent No.2 qua her molestation. Accordingly, a reference from Dharamshala Office was received by the Head Office of the petitioner at Chandigarh. To find out the veracity of the complaint, the petitioner had appointed a two member Committee, headed by its Manager (Administration). The said Committee visited Dharamshala office and joined the complainant and respondent No.2 in the enquiry into the matter.

During the said enquiry, respondent No.2 categorically admitted his fault in that regard and submitted that he be pardoned for the said mistake. The Committee submitted the report to that effect with the necessary documents. Hence a tentative decision was taken to terminate the service of respondent No.2. However, since another reference was already pending before the Labour Court, therefore, the petitioner had applied for seeking approval from the Labour Court, as required under Section 33 (2) (b) of the Act. The said prayer had wrongly been declined by the Labour Court vide the impugned orders. It is further submitted by counsel for the petitioner that the Labour Court has gone wrong in law in treating the proceedings of approval as instituted under Section 33 (2) (b) at par with the proceedings of reference of a dispute under Section 10 of the Act. Relying upon the judgment of the Hon'ble Supreme Court rendered in 'Cholan Roadways Limited v. G. Thirugnanasambandam, 2005 AIR (SC) 570', counsel for the petitioner has submitted that the nature of the enquiry as envisaged under Section 33 (2) (b) of the Act is only to assess a prima facie case in the matter and the same is not to be taken to the level of a trial of a regular reference made to a Labour Court. Counsel has further pointed out that even if management terminates the service of an employee after approval under Section 33 (2)(b) of the Act, still the remedy of the workman to seek a reference qua the termination is not excluded. Moreover, even while appearing as a witness before the Labour Court in the application under Section 33 (2) (b) of the Act, the respondent-workman had admitted his earlier statement as made during the enquiry. Accordingly, the Labour Court has gone totally wrong in declining the approvals sought by the petitioner.

Although notice was sent to respondent No.2. However, he chose not to join the proceedings and he was ordered to be proceeded ex-parte vide order dated 19.12.2018 when the case was adjourned for ex-parte arguments. Even thereafter, the case has been adjourned, at least, twice, however, respondent No.2 has again chosen not to join the proceedings. Therefore, this Court is deprived of the assistance from the side of respondent No.2-workman. This Court has to decide the case as per the arguments raised by counsel for the petitioner and as per the available record.

Having considered the arguments of counsel for the petitioner and having gone through the paper book, this Court finds substance in the arguments raised by counsel for the petitioner. It is not even in dispute that a complaint from a female employee against the respondent No. 2- workman, indeed, was received by the Dharamshala office of the petitioner. The petitioner even got the same inquired into through a Committee, headed by a responsible officer of the rank of Manager (Administration). That enquiry was conducted by joining the complainant, respondent-workman, as well as, another witness. During that enquiry, respondent No.2- workman categorically admitted having committed the misconduct as alleged against him by the female employee. Therefore, it cannot be said, by any means, that there was not even prima facie case against respondent No.2. Moreover, while dealing with the application filed by the petitioner under Section 33 (2) (b) of the Act, the Labour Court has gone to the extent of framing the issues and taking the evidence. During those proceedings as well, respondent No.2 has not denied having made the statement before the Committee, as such, although he tried to wriggle out of the same by ascertaining that the same was extracted under a

promise. However, nothing has come on record as to the effect that he was ever promised any benefit for admitting his guilt by the members of the Enquiry Committee. Hence, the Labour Court was not right in declining the approval sought for by the petitioner. Moreover, the perusal of the judgment passed by the Labour Court shows that the Labour Court has observed that the approval cannot be granted merely because there is a prima face case made out against the respondent workman and that regular enquiry was required to be held. However, as per the judgment rendered by the Hon'ble Supreme Court in **Cholan Roadways Limited's case** (supra), the employer is required only to establish a prima facie case for seeking approval under Section 33 (2) (b) of the Act. The reliance of counsel for the petitioner upon the judgment of the Supreme Court is found to be well placed even qua the aspect that the approval sought under Section 33 (2) (b) of the Act is not a substitute for a regular reference, and further, that grant of approval under Section 33 (2) (b) of the Act, as such, would not have taken away the remedy of aggrieved workman; of seeking a regular reference from the appropriate Government. Hence, even on that count, the impugned award/order passed by the Labour Court found to be not sustainable.

In view of the above, finding merits in the present petition, the same is allowed. The impugned order is set aside.

(RAJBIR SEHRAWAT)
JUDGE

30.3.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No