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

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***Reserved on: 14.09.2022
Pronounced on: 11.10.2022***

+ W.P.(C) 14715/2004

BIKRAM SINGH

..... Petitioner

Through: Ms. Karishma Singh,
Advocate

versus

M/S DELHI TRANSPORT
CORPORATION

..... Respondent

Through: Mr. Uday N. Tiwari and Ms.
Saloni Singh, Advocates

+ W.P.(C) 19645/2005

THE MANAGEMENT OF M/S DELHI
TRANSPORT CORPORATION

..... Petitioner

Through: Mr. Uday N. Tiwari and Ms.
Saloni Singh, Advocates

versus

BIKRAM SINGH

..... Respondent

Through: Ms. Karishma Singh,
Advocate

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. Delhi Transport Corporation ("DTC") in W.P.(C) No.19645/2005 is assailing the orders dated 06.03.1999 & 9.4.2002 passed by the Industrial Tribunal-II in O.P. No.422/1993 titled as "*Delhi Transport Corporation Vs Bikram W.P.(C) 14715/2004 & W.P.(C) 19645/2005*"

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Singh” (“**impugned orders**”). Vide the impugned order dated 06.03.1999, the learned Labour Court was pleased to hold that the domestic enquiry conducted by the DTC was vitiated whereas vide the impugned order dated 09.04.2002, the learned Labour Court refused to grant approval to the DTC for the removal of the respondent Shri Bikram Singh (“**workman**”) from the service as the DTC failed to establish the commission of alleged misconduct by the workman.

2. In W.P(C) No. 14715/2004, the workman is assailing the action of the DTC in not taking him back in service despite the order dated 09.04.2002 of the learned Labour Court rejecting the approval application filed by the DTC under Section 33(2)(b) of the Industrial Disputes Act, 1947 (“**the Act**”) for removing the workman from the service. The Workman is seeking a direction against the DTC for reinstating him back with full back wages and continuity of service with all consequential benefits.
3. Since both the Writ Petitions are arising out from the order dated 09.04.2002 of the learned Labour Court in O.P. No.422/1993, both these Petitions were taken up together for disposal.

BRIEF FACTS LEADING TO THE PRESENT WRIT PETITION ARE AS FOLLOWS:

4. The workman was employed with DTC since 29.03.1989 as Driver, Badge No. 19449, Token No. 57374. It was the allegation of the DTC that while he was on duty on bus No.9764, route

no.226/ 4A on 22.2.93, the checking staff of mini bus no.525 checked his bus at I. P. College and he was found driving the bus in a drunken condition. Hence a charge-sheet dated 26.02.1993 was issued against him for the alleged misconduct. After conducting the enquiry, DTC terminated the service of the workman vide order dated 15.07.1993 and one month's salary was remitted to the workman under the provisions of Section 33 (2) (b) of the Act.

5. At that time an industrial dispute concerning DTC workers' demand for implementation of 4th Pay Commission's report was pending adjudication in the Industrial Tribunal. Hence, on the same date when the order for removal was passed i.e. 15.7.1993, an application was also filed by the DTC before the Industrial Tribunal under Section 33 (2) (b) of the Act seeking approval of the Tribunal of its decision for the removal of the workman from service.
6. The present writ petitions are arising from the said approval Application filed by the DTC under Section 33(2)(b) of the Industrial Disputes Act, 1947.
7. At the outset, this Court deems it appropriate to reiterate the scope and ambit of Section 33 (2)(b) of the I.D. Act as pronounced by the learned Single Judge of this Court in ***Delhi Transport Corporation Vs. Shyam Lal*** decided on 1.7.2010, in W.P.(C) No.3633/2004, which is reproduced herein below:

*“11. The scope of jurisdiction of the Industrial
Adjudicator under Section 33(2)(b), is only to*

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oversee the dismissal to ensure that no unfair labour practice or victimization has been practiced. If the procedure of fair hearing has been observed and a prima-facie case for dismissal is made out; approval has to be granted. The jurisdiction of the Industrial Adjudicator under Section 33(2)(b) cannot be wider than this. Reference in this regard may be made to Lalla Ram v. D.C.M. Chemical Works Ltd. AIR 1978 SC 1004 and Cholan Roadways Limited v. G. Thirugnanasambandam AIR 2005 SC 570. The proceeding under Section 33(2)(b) is not a substitute for an industrial dispute referred for adjudication under Section 10. It is for this reason only that the decision on the application under Section 33(2)(b) does not close the right of the respondent workman to raise an industrial dispute under Section 10 of the ID Act.

12. However, the distinction between adjudication of an industrial dispute referred under Section 10 and an approval application under Section 33(2)(b) in practice is found to have been blurred. Applications under Section 33(2)(b) are being treated and tried in the same manner and following the same procedure as an industrial dispute. This has led to a situation, where decision of applications under Section 33(2)(b) is held up for years and/or takes the same time as decision of an industrial dispute under Section 10. Often, it is also found to result in parallel proceedings or duplicate proceedings in both of which witnesses are examined and on same facts and evidence, inconsistent findings returned in two proceedings, in ignorance of other proceeding.

13. If the object of Section 33(2)(b) is only to prevent victimization of an employee in dispute

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with the management/employer, the scope of inquiry by the Industrial Adjudicator while dealing with and deciding such application cannot possibly be the same as while dealing with and deciding an industrial dispute. If an application under Section 33(2)(b) is to be dealt with and scope of inquiry therein so limited, the disposal thereof should not take long. The findings returned by the Industrial Adjudicator on an application under Section 33(2)(b) are “prima-facie” and not “final” and not binding in a subsequent industrial dispute. The findings can be “prima-facie” only if returned on the basis of “summary” examination and not if returned on the basis of “detailed examination” as in adjudication of industrial disputes.

14. *However, it is found that the Industrial Adjudicators, after completion of pleadings in an application under Section 33(2)(b), frame a preliminary issue qua validity of domestic inquiry, allow examination of witnesses on such preliminary issues and if decide preliminary issues against the management/employer and if the management/employer has exercised the option to prove misconduct before the Industrial Adjudicator, frame issues thereon, again allow evidence and then adjudicate. Very often, the reply to the application under Section 33(2)(b) not even found to contain defence of victimization or found to contain vague and general pleas qua victimization; the pleas as relevant in an industrial dispute are raised and adjudicated. In a large number of cases, the complete inquiry proceedings/reports are not even found on the file of Industrial Adjudicator.*

15. *In my view, the Industrial Adjudicators should insist on the complete record/report of domestic inquiry and the disciplinary authority to be*

produced along with an application under Section 33(2)(b). Thereafter, the pleadings should be perused minutely to see whether any case of victimization is made out. If the workman has not pleaded a case of victimization owing to pendency of an earlier dispute or has not made out a case of action of which approval is sought having been taken against him to settle scores with him in the earlier dispute or to derive unfair advantage in the earlier dispute, or if the pleadings in this respect are vague and without particulars, no further inquiry by the Industrial Adjudicators is needed and the application under Section 33(2)(b) should be allowed immediately. Even if pleas are taken by the workman of the domestic inquiry having been conducted in violation of the Standing Orders/Rules or the principles of natural justice, but the same is not attributable to victimization as aforesaid, such pleas ought not to be adjudicated in Section 33(2)(b) proceedings but should be left to be adjudicated in the industrial dispute if raised under Section 10 of the Act. The earlier industrial dispute owing where to Section 33(2)(b) application is necessitated, in a large number of cases is not of the individual workman against whom application under Section 33(2)(b) is filed but has been raised by all workmen of the establishment or their union and with respect to their general service conditions. In such cases the management/employer generally cannot be said to have taken the action of which approval under Section 33(2)(b) is sought, by way of victimization, unless it is shown that such workman was responsible for initiating/instigating or pursuing the earlier dispute.

16. *If the workman in his reply to Section 33(2)(b) application or otherwise does make out a case of victimization, the industrial adjudicator should then proceed to see by examination of domestic inquiry proceedings whether the same is borne out therefrom. However, such examination should again be limited to whether, to ensure dismissal of workman, he has been as a matter of design, deprived of or prevented from proper opportunity or from proving his case. Such examination has to be narrower than examination of validity of domestic inquiry in an industrial dispute under Section 10. For instance, while an inadvertent breach of prescribed procedure of inquiry may entitle the industrial adjudicator in a Section 10 proceeding to hold the domestic inquiry to be vitiated but unless such breach is found to be intended to prevent the workman from placing his version before the Inquiry Officer, so as to ensure finding against him, the same may not constitute a ground in a Section 33(2)(b) proceeding to hold the domestic inquiry to be vitiated.*
17. *Once (in a Section 33(2)(b) proceeding) the domestic inquiry is held to be vitiated for the reason of victimization, the Industrial Adjudicator should weigh, if victimization is quite evident, need may not arise to give opportunity to the management/employer to prove misconduct before the Industrial Adjudicator; however if evidence of victimization in domestic inquiry is not so strong, the Industrial Adjudicator may proceed to determine whether charge of misconduct is false by way of victimization or not. If the workman is prima facie found guilty of misconduct, approval should still be granted by*

allowing the application under Section 33(2)(b) and leaving the workman to raise other pleas in the industrial Industrial Adjudicator may record evidence but within the confines aforesaid and without expanding the scope of inquiry.

18. It is hoped that by following the aforesaid procedure, Section 33(2)(b) proceedings will be disposed of expeditiously, as they were intended to be and shall not languish for years, as has been happening.”

5. This Court in **W.P.(C) No. 5946/2003** titled as ***Birmati Vs PO, Industrial Tribunal-II***, relied upon the law laid by the learned Single Judge in ***Delhi Transport Corporation (supra)*** and noted the following principles from the said Judgment:

“29. Hence from the dicta of Delhi Transport Corporation (supra) the following principles emerge:

- (i) While examining an application under Section 33(2)(b) of the I.D. Act, the jurisdiction of the Industrial Tribunal is limited.*
- (ii) The scope of examination under Section 33 (2)(b) of the I.D. Act is to find out whether the proposed action is the result of any victimization against the Workman concerned or not.*
- (iii) After examining the complete record, if the learned Tribunal is of the view that the proposed action is initiated against the Workman with an intention to victimize him, no approval should be granted to the Management. The Application can be rejected. However, if the Tribunal is of the*

view that the proposed action is not because of the victimization, the Management's application deserves to be allowed.

(iv) The legality of the domestic enquiry is not to be tested in a proceeding under Section 33(2)(b) of the I.D. Act. The learned Single Judge, in the above mentioned Judgment clarified it in clear terms that „Even if pleas are taken by the workman of the domestic inquiry having been conducted in violation of the Standing Orders/Rules or the principles of natural justice, but the same is not attributable to victimization as aforesaid, such pleas ought not to be adjudicated in Section 33(2)(b) proceedings but should be left to be adjudicated in the industrial dispute if raised under Section 10 of the Act'.

(v) The observations made by the Industrial Tribunal qua the domestic enquiry is “prima facie” in nature and not a final one.

6. Before the Industrial Tribunal, the workman disputed the validity of the domestic enquiry conducted by the DTC against him. Hence the Industrial Tribunal examined the validity of the domestic enquiry and vide the impugned order dated 06.03.1999 held the said domestic enquiry conducted by DTC as vitiated.

7. This Court carefully examined the pleadings and evidence adduced by the parties. However, there is no case made out to show that the DTC effected the termination of the workman with an intention to victimize the workman. Learned counsel

for the Workman sought to argue that the enquiry proceedings are vitiated and the principles of natural justice have not been followed. However, as per the law laid down by this Court in *Delhi Transport Corporation (supra)* referred to above, all these are issues to be decided in an appropriate industrial dispute which is to be raised by the workman with respect to his termination.

7. The facts of the present case are therefore squarely covered by the ratio of this Court's Judgement in *Delhi Transport Corporation (supra)*. Since the termination of the Respondent Workman was not with an intention to victimize him, this Court is of the considered view that the learned Labour Court erred in not granting approval to the DTC for removing the Respondent Workman from the service. In view of the above, the impugned orders dated 06.03.1999 and 09.04.2002 in O.P. No.422/1993 titled as "*Delhi Transport Corporation v. Bikram Singh*" are hereby quashed and set aside. The Writ Petition filed by the DTC, i.e, W.P. (C) 19645/2005 is accordingly allowed. Consequently, the Writ Petition filed by the workman, i.e, W.P. (C) 14715/2004 is dismissed.
8. The relief prayed for by the management of DTC, namely, approval of the action of the Corporation in terminating the services of the workman, is hereby granted.
9. While examining the Application under Section 33(2)(b) of the I.D. Act, the opinion expressed by the learned Labour Court
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was of preliminary in nature. Hence the Respondent Workman is at liberty to challenge his termination order in an appropriate proceeding in accordance with law. In case the Respondent Workman chose to challenge his termination order, the learned Labour Court will decide the same without being influenced by the opinion expressed by the learned Labour Court in these proceedings.

10. This Court earlier vide order dated 07.04.2010, allowed the Application filed by the Workman under Section 17-B of the I.D. Act and directed the DTC to make the payment to the workman under Section 17-B of the I.D. Act from 09.04.2002 till the date of superannuation, i.e, 15.05.2010. Further this Court directed the Workman to file an Affidavit stating that in case the approval application is allowed, he will refund the excess amount received by him, i.e, the difference between the last drawn wages and the Minimum wages. During the pendency of the present Writ Petitions, the Workman expired on 14.11.2017 and legal heirs were brought on record. As held by the Hon'ble Supreme Court in *Dilip Mani Dubey Vs M/s SIEL Limited & Anr.* reported as **2019(4) SCC 534**, the proceedings under Section 17-B of the I.D. Act are independent proceedings in nature and not dependent upon the final order passed in the main proceedings. Considering the peculiar facts and circumstances, of the present case, it is clarified that the payment already made by the DTC to the Workman under

Section 17-B of the I.D. Act is neither recoverable nor adjustable.

11. The parties are left to bear their own cost.

GAURANG KANTH
(Judge)

OCTOBER 11, 2022

