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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 24.08.2022
Pronounced on: 09.09.2022

+ W.P.(C) 5946/2003

BIRMATI

..... Petitioner

Through: Mr. Anil Mittal and Ms.
 Komal Aggarwal Sinha,
 Advocates.

versus

PRESIDING OFFICER INDUSTRIAL
 TRIBUNAL-II & ORS.

..... Respondents

Through: Mr. Sarfaraz Khan, Advocate.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present Writ Petition emanates from the judgment dated 16.10.1999 ("**Impugned judgment**"), passed by the learned Presiding Officer Shri B.B. Chaudhary, Industrial Tribunal II: Tis Hazari Courts, Delhi in O.P No. 104/1993 titled as *Delhi Transport Corporation Indraprastha Estate Vs. Sh. Ajeet Singh represented by Smt. Birmati and sons and daughters*. Vide the Impugned Judgment, the learned Tribunal allowed the application filed by respondent No. 2 under Section 33 (2) (b) of the Industrial Disputes Act, 1947 ("**I.D. Act**") and as a result confirmed the decision taken by respondent No.2 for removal of



the deceased husband of the Petitioner, Sh. Ajeet Singh, from service. The petitioner *vide* the present petition *is inter alia* praying to set aside the impugned judgment and the deceased husband of the petitioner be continued in service till 09.06.1993. Further, to declare the proceedings before the Industrial Tribunal subsequent to 04.08.1999 be declared void. Furthermore, the petitioner is also seeking direction against respondent No.2 to pay all consequential benefits of service including family pension to the petitioner holding that late Sh. Ajeet Singh had not misconducted himself at any stage and continued to be in service till he died on 09.06.1993.

The facts germane to the present writ petition are as follows:

2. At the outset, it is the case of the Petitioner that her husband, Sh. Ajeet Singh joined the services of respondent No.2 as a driver on or around 03.05.1982 as badge no. 11129. In the year 1991, the petitioner's husband suffered a heart attack and thereafter has been continuously suffering from serious cardiac problems since 27.02.1991.
3. Owing to the illness, the petitioner's husband on 29.04.1991, sent an application to respondent No.2 requesting to perform light duty. The respondent no.2 vide its letter dated 09.05.1991 informed Sh. Ajeet Singh that '*there is no provision for drivers for light duty*' and hence denied his request. Sh. Ajeet Singh was further ordered to submit an application for grant of 3 months' leave.



4. On 22.07.1991, respondent No. 2 vide a communication, declared the husband of the Petitioner unfit for duty for a period of three months with effect from 30.04.1991 which was going to expire on 29.07.1991. Further, he was also requested to appear before the DTC Medical Board for further checkup, failing which action in the matter would be taken.
5. It is further the case of the petitioner that instead of taking a sympathetic view towards her husband Sh. Ajeet Singh, he was dealt with in the most inhumane manner and respondent No.2 went ahead and denied to assign light duty to the petitioner's husband and called upon him to report for duty.
6. Subsequently, vide letters dated 26.03.1992 and 12.05.1992, addressed to the petitioner's husband, respondent No.2 stated that the petitioner's husband is absenting from duties since 09.03.1992. He was called upon to report immediately within a period of 24 hours and was further also directed to appear before the DTC Medical Board for checkup along with his detailed medical record, in case of illness.
7. On 02.07.1992, Sh. Ajeet Singh was allegedly charge-sheeted and further, an alleged oral enquiry and investigations were conducted by the Depot Manager who acted as the Disciplinary Authority wherein the petitioner's husband was found guilty. Later a Show Cause Notice ("SCN") dated 14.12.1992 was issued by the Disciplinary Authority and one month's salary was also remitted to the petitioner's husband along with the SCN.



8. Respondent No.2 vide its letter dated 23.02.1993, removed the petitioner's husband from the services of respondent No.2 under para 15 (2) (vi) of D.R.T.A (Condition of Appointment and Service) Regulations, 1952. Pursuant thereto, on the same day, respondent No.2 also filed an application under Section 33(2) (b) of the I.D Act being ID No. 17 of 1988 before the Industrial Tribunal. Pertinently, notice in the application was issued to the petitioner's husband on 09.07.1993 and 15.10.1993, after the unfortunate death of Sh. Ajeet Singh on 09.06.1993. As a result, the petitioner who is the wife of the deceased Sh. Ajeet Singh, was substituted as the legal representative.
9. Pursuant to that, the learned Tribunal vide its order dated 04.07.1996, framed a preliminary issue with regard to the validity of the enquiry conducted by respondent No.2.

“Whether the applicant held a legal and valid enquiry against the Respondent?”

10. The petitioner furthered her case by stating that vide order dated 04.08.1999, the learned Tribunal, in spite of holding that the enquiry conducted by respondent No.2 was perverse and cannot be acted upon, went ahead ex-parte on the respondent No.2's request to frame additional issues of misconduct of the petitioner's husband. Relevant part of the order dated 04.08.1999 is reproduced hereunder:

“During the course of arguments, the learned AR of the DTC has failed to show any document of the service of the charge sheet upon the deceased respondent. He has also failed to show any document of the service of the letter



upon the deceased to take part in the enquiry proceedings held on 7.12.92. He has submitted that letters were sent to the delinquent. However, the Department has failed to place on file any document of the service of the letters of charge sheet or date of holding of the enquiry upon the deceased delinquent. It has been held in the case reported in 1998 LLR 1097, Union of India & Ors. vs. Dina Nath Shanta Ram that if the charge sheet is sent by registered post and is returned with postal remarks "not found" then it does not amount to tendering of the charge sheet to you the addressee. Further efforts to serve the charge sheet on the employee should be made.

It is not the case of the petitioner that charge sheet was published in the newspaper. It is also not the case that the charge sheet and the date of hearing of the enquiry were pasted at last known address of the delinquent. In the circumstances, it cannot be held that there was service of charge sheet upon the deceased delinquent or that he had knowledge of the date of hearing of the enquiry. Consequently, the exparte proceedings initiated against the delinquent by the enquiry officer was not according to principles of Natural Justice. Consequently, finding of the Enquiry Officer on the basis of such proceeding is perverse and cannot be acted upon. It is a case of no enquiry. Hence, the issue is decided against the petitioner.

On the request of the petitioner, the petitioner is allowed to establish the misconduct of the Respondent before the Tribunal. Following issues are framed:

- 1. Whether the deceased respondent has committed misconduct as alleged in the charge sheet.*
- 2. Whether the petitioner remitted on month's wages to the deceased respondent as per provision of Section 33 (2) (b) of I.D. Act?*
- 3. Relief"*



11. Further, on 08.10.1999, no fresh notice was issued to the petitioner and again an ex-parte order was passed. Relevant part of the order is reproduced hereunder:

“None is present for the deceased respondent.

ARM has filed affidavits of Sh. Kanwar Lai and Smt. Neelam Malhotra and has closed AE by making an oral statement. Arguments heard. Put up the matter on 16.10.1999.”

12. The learned Tribunal vide impugned judgment dated 16.10.1999 confirmed the decision taken by respondent No.2 of removing Sh. Ajeet Singh from Service. Being aggrieved by the impugned judgment, the Petitioner filed the present Petition. Relevant part of the impugned judgment is reproduced hereunder:

“Sh. Kanwar Lal, ATI, of the petitioner has testified that as per report EX.AW1/1 the deceased respondent was found absent from duty with effect from 9.3.1992. The charge sheet EX.AW2/A was issued. There is no evidence to contradict the statement of AW Sh. Kanwar Lal. There is no evidence from the side of the Respondents that leave application or medical certificate of the deceased respondent were sent for the period of his absence from duty. Consequently, the continuous absence from duty with effect from 9.3.1992 without any intimation and permission amounts to misconduct within the meaning of para 4 (i) (ii) of the standing order governing the conduct of DTC employees. It also amounts to misconduct within para 19 (f) (h) & (m) of the standing order as the deceased respondent was negligent towards his duty. Hence, the case regarding the misconduct of the deceased respondent stands established.



AW Smt. Neelam Malhotra, Senior Clerk working in DTC Depot, Vasant Vihar has testified that full one month's amounting to Rs. 2,579/- was remitted to the Respondent through money order. The salary was sent as per salary certificate EX.AW2/1. There is no denial by the Respondents of receiving of the one month's salary alongwith the letter of removal of the deceased respondent from service.

Thus, the petitioner has been able to establish all the ingredients of Section 33 (2) (b) of I.D. Act. The petition is allowed. File be consigned to record room."

13. The petitioner preferred the present Writ Petition challenging the Impugned Judgment dated 16.10.1999. Rule nisi in the present matter was issued vide this Hon'ble Court's order dated 16.09.2003.

SUBMISSIONS OF THE PETITIONER

14. Learned counsel for the petitioner submitted that the application under Section 33(2) (b) of the I.D Act before the learned Tribunal was not maintainable on the following grounds:

Firstly, the enquiry conducted by respondent No.2 was a hotch potch enquiry and was predetermined to remove the petitioner's husband from service in a very illegal and malafide manner. Further, while conducting the enquiry, the procedure established under the D.T.R.A (Conditions for Appointment and Service) Regulation 1952 has not been followed. The enquiry report does not even whisper about the illness of the petitioner's husband. It is also not out of place to mention that the petitioner's husband was



entitled to medical leave, casual leave, extraordinary leave and special leave and no such leave was ever granted to him.

Secondly, respondent No.2 has not served the charge sheet as well as the notice of enquiry on the petitioner's husband.

Thirdly, principles of Natural Justice have not been followed as the petitioner has not been given any opportunity to defend his case. Neither oral enquiry nor detailed investigation were conducted. It is also pertinent to note that no service was ever effected on the petitioner's husband and thus the decision of the Enquiry officer ex-parte is malafide.

Fourthly, the learned Industrial Tribunal even after recording in its order dated 04.08.1999 that the enquiry conducted by respondent No.2 was perverse and cannot be acted upon, went ahead ex-parte on the respondent No.2's request without issuing fresh notice to the petitioner's husband to frame additional issues of misconduct. The learned Tribunal in utter disregard to the principles of Natural Justice ex-parte justified the malafide act of removing the petitioner's husband from service vide the Impugned Judgment.

15. Learned counsel submitted that the act of respondent No.2 of sending one month's salary along with the SCN clearly shows the malafide and a predetermined approach towards the petitioner's husband. He further submitted that it was the fundamental right of the petitioner's husband to be provided with 'light duty' particularly when the petitioner's husband was advised on medical grounds. He pointed out that the fact that the petitioner's



husband passed away on 09.06.1993, clearly shows that his absence from duty was not willful but only for reasons beyond its control. The extreme penalty of dismissal from service was totally unwarranted given the circumstances of the case.

16. Lastly, the learned counsel argued that the petitioner is also a victim of her counsel Sh. Guglani as she did not appear before respondent No.1 in proceedings dated 04.07.1996, 04.08.1999 and 16.10.1999. The petitioner further argued that the delay in filing the present writ petition is also because the impugned judgment was not published and the petitioner learnt about passing of the impugned judgment only in May/June 2003, when Award against her brother-in-law Sh. Ramphool Singh was published in May 2003 in which the same counsel, Sh. Guglani was appointed.
17. With these submissions, learned counsel for the Petitioner contended that the impugned judgment is without jurisdiction and is unsustainable in law and hence is liable to be dismissed.

SUBMISSIONS OF RESPONDENT NO.2

18. Learned counsel for respondent No.2 vehemently initiated his arguments by stating that the present Writ Petition is highly belated as it was filed after about five years of passing of the impugned judgment i.e., 03.09.2003 and on that ground alone the same is liable to be dismissed. He further submitted that the make-believe story of the petitioner that she had no knowledge of the impugned judgment having been passed on 16.10.1999 is also unbelievable.



19. Learned counsel emphasized that while dealing with a matter under Section 33(2)(b) of the Act, no detailed enquiry is required. The Tribunal is only required to discover the existence of a prima facie case as set by the employer against the employee. He advanced his argument in support of the impugned judgment and reiterated that Petitioner's husband late Sh. Ajeet Singh is a habitual absentee and had remained absent from duty with effect from 09.03.1992 without any intimation and permission and therefore he was charge-sheeted and accordingly disciplinary proceedings were initiated. Further, the learned counsel categorically submitted that the irregularities of the petitioner's husband tantamount to misconduct within the meaning of para 4 (i) (ii) and 19 (f) (h) & (m) of the Standing Orders governing the conduct of the DTC employees.
20. In support of the submission that the petitioner's husband was a habitual absentee, respondent No.2 examined Sh. Kanwar Lal, ATI of the respondent No.2 who testified that as per report/EX. AW1/1, the deceased Sh. Ajeet Singh was found absent from duty with effect from 09.03.1992. He further testified that charge-sheet/EX.AW2 was issued. Further, with regard to the submission that full one month's salary amounting to Rs.2,579/- was remitted to the petitioner's husband through money order, respondent No.2 examined Smt. Neelam Malhotra, Senior Clerk working in DTC Depot who testified that the salary was sent as per salary certificate/EX. AW2/1.



21. Learned counsel further went ahead and said that the enquiry was conducted according to the principles of Natural Justice and the Petitioner's husband was given full opportunity to defend his case which was not availed by him. Furthermore, Sh. Ajeet Singh was found guilty by the Enquiry Officer and as a result a SCN dated 14.12.1992 was issued to him. However, the petitioner's husband did not submit any reply to the same. It was also submitted that the Depot Manager after fully considering the case has decided for removal of the petitioner's husband from service on 23.02.1993 with one month's salary fulfilling the requirement of Section 32 (2)(b) of the Act.
22. It was submitted by learned counsel that the petitioner herself was negligent and she made no attempt whatsoever to contact her counsel to provide necessary assistance, cooperation and instructions to conduct the case. Hence, the facts and circumstances of the present case do not warrant grant of any indulgence under Article 226 of the Constitution of India.
23. Learned counsel vehemently argued that the learned Tribunal was fully competent to frame the additional issues and to provide an opportunity to respondent No.2 to adduce evidence to prove the charges of misconduct against the petitioner's husband. He asserted that the findings of the learned Tribunal are not liable to be interfered under Article 226 of the Constitution of India.
24. Respondent No.2, while disregarding the arguments made by the petitioner with regard to the issuance of fresh notice before framing of the additional issues related to misconduct, submitted that the



proceedings were going on continuously and the question of giving notice to the petitioner did not arise.

LEGAL ANALYSIS

25. I have given an anxious consideration to the rival arguments of both the parties and perused the documents placed on record. At this juncture, it is pertinent to expound the scope and extent of Section 33 (2) (b) of the Act to understand the present matter with precision.

26. In order to sustain an application for approval for discharge or removal from service under the above-mentioned provision, all that the learned Tribunal is required to discover is the existence of a prima facie case as set by the employer against the delinquent employee. It has to be borne in mind that an approval of an application under Section 33 (2) (b) of the I.D. Act does not rule out the possibility of taking recourse to the provisions of Section 10 of the I.D. Act. Reliance has been placed on *ITC Ltd. v. Government of Karnataka*, [1985] 1 LLJ 227 : [1985] 2 LLJ 430 (Karnataka) (DB), *Hindustan General Electric Corporation v. State of Bihar*, [1965] 2 LLJ 97 (Pat.) (DB) and *Navalbhai Karsanbhai Chanhari v. Shri Digvijay Woollen Mills Ltd.*, [1988] 2 LLJ 101 & 108.)

27. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in *Martin Burn Ltd. v. R.N. Banerjee*, reported as AIR 1958 SC 79. While exercising jurisdiction under Section 33(2)(b) of the I.D. Act, the Industrial Tribunal is required to see as to whether



a *prima facie* case has been made out as regard the validity or otherwise of the domestic enquiry held against the delinquent; keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the I.D. Act in ***Martin Burn's case*** (supra) wherein it was held as under:

“27....A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See Buckingham & Carnatic Co. Ltd. v. The Workers of the Company, (1952) LAC 490 (F)...”

28. The scope of jurisdiction of the learned Tribunal while dealing with applications under Section 33 (2)(b) of the Act came up for consideration before a Single Judge Bench of this Court in the case of ***Delhi Transport Corporation v. Shyam Lal*** in W.P.(C) No.3633/2004 decided on 1st July, 2010 and after considering the entire case law on the point, it was held as under:



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

13. If the object of Section 33(2)(b) is only to prevent victimization of an employee in dispute 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 dispute under Section 10. For the said limited aspect, the



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.”

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.

30. In view of the above stated legal principle, this Court examined the impugned order dated 16.10.2009. From the perusal of the same, it is evident that the learned Tribunal, in the present case, exceeded its jurisdiction while passing the impugned order dated 16.10.2009. The learned Tribunal ought not to have examined the veracity of the domestic enquiry conducted by the Respondent Management. The learned Tribunal failed to examine the issue as to 'whether the proposed action was the result of victimization against the Workman'. Generally, in such cases, this Court remands the matter back to the Tribunal for fresh examination. However, in the present case, this Court finds that such course would not be appropriate. The Workman has already expired and his widow is the Petitioner before this Court. The Tribunal granted approval vide order dated 16.10.1999. More than two



decades have elapsed from the passing of the approval order. Hence, in the interest of justice, this Court examined the application filed by the Respondent Management under Section 33(2)(b) of the ID Act and the reply filed by the Petitioner herein as well as other relevant documents. From the perusal of the documents, it is apparent that the proposed action was not the result of any victimization against the Workman. The Respondents acted in the usual course of their business and conducted a domestic enquiry. After conclusion of the said enquiry, punishment has been imposed on the deceased workman. Since there is no victimization against the Workman, the Application filed by the Respondent Management under Section 33(2)(b) of the ID Act was rightly allowed by the learned Tribunal. However, the learned Tribunal exceeded its jurisdiction while examining the legality of the domestic enquiry conducted by the Respondent Management. At the cost of repetition, it is reiterated that the proceeding under Section 33(2)(b) of the I.D. Act is not a substitute for an industrial dispute referred for adjudication under Section 10 of the I.D. Act. It is for this reason only that the decision on the application under Section 33(2)(b) of the I.D. Act does not close the right of the workman to raise an industrial dispute under Section 10 of the I.D. Act.

31. Therefore, in view of the aforesaid discussion, the impugned order of the learned Tribunal is upheld to the extent that the approval is accorded to the Respondent Management under Section 33(2)(b) of the I.D. Act for proceeding against the



Workman (now deceased). The learned Tribunal exceeded its jurisdiction while examining the legality of the domestic enquiry and hence the findings of the learned Tribunal with respect to the legality of the domestic enquiry conducted by the Respondent Management are hereby set aside. The Petitioner is at liberty to challenge the said domestic enquiry conducted by the Respondent Management in accordance with law. It is further clarified that in case the Petitioner initiates any fresh proceedings challenging the domestic enquiry conducted by the Respondents, the same is to be considered afresh without being influenced by any observations made by the learned Tribunal in the impugned order dated 16.10.1999.

32. In view of the aforesaid observations, the present Writ Petition is disposed of. No order as to costs.

GAURANG KANTH, J.

SEPTEMBER 09, 2022

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