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

+ **W.P.(C) 12549/2022**

M/S DEUTSCHE LUFTHANSA AG Petitioner

Through: **Mr.Akhil Anand and Mr.Suyash
Srivastava, Advocates**

versus

MS. MANISHA THAKUR & ORS. Respondents

Through: **Mr.Akshay Goel and Mr.Vyom
Chaturvedi, advocates for respondent
no.1.**

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Date of Decision: 31.08.2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CM APPL. 37990/2022 (exemption)

Exemption is allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 12549/2022 & CM APPL. 37989/2022

1. By way of the present petition, the petitioner has challenged the impugned order dated 08.08.2022 passed by the learned Central Government Industrial Tribunal-cum-Labour Court-II (CGIT) in I.D.Case No.119 of 2021 whereby the learned CGIT has rejected the contention of the petitioner for framing of two additional issues (i)



whether the claimant is a workman or not as defined under the ID Act
(ii) whether a just and proper enquiry was conducted against the complainant or not.

2. Learned counsel for the petitioner submits that initially an ID 197/2018 was pending before the learned tribunal regarding services conditions and other matters. During the pendency of this petition, the respondent-workman was terminated by the petitioner-management after conducting an enquiry in accordance with principles of natural justice. In the meanwhile, the petitioner filed an application under Section 33A, on which the present ID No.119/2021 was registered. Learned trial court on the basis of the pleadings of the parties framed the following issues as contained in the order dated 02.06.2022:

1. *Whether the proceedings is maintainable as filed u/s 33A of the ID Act.*
2. *Whether the service of the claimant was illegally terminated by the management during the pendency of the industrial dispute and there was violation of the provisions of Section 33 (2) (b) of the ID Act.*
3. *To what relief the claimant is entitled to.*

3. While the matter was at the stage of claimant's evidence, the petitioner-management moved an application for framing of two additional issues. Learned counsel submits that the observation of the learned CGIT as contained below is illegal and liable to be set aside:

"It is thus clear that the scope of sec 33A is only to determine if the impugned alteration is in regard to the matter connected to the Industrial Dispute pending and in contravention of the provisions of sec 33 of the ID Act. The scope of Sec 33A is never to adjudicate the correctness of the action taken or fairness of



the domestic inquiry conducted. It would always be open for the parties to challenge fairness of the inquiry in which the other party can rebut the same. Hence there is no need for framing an issue with regard to the fairness of the inquiry even though the complainant, as a matter of reference to the context, has stated that the inquiry was not conducted fairly.”

4. Learned counsel for the petitioner has relied upon ***Rajasthan State Road Transport Corporation and Another vs. Satya Prakash*** (2013) 9 SCC 232 wherein it was inter alia held as under:

“23. In the present case, the Tribunal accepted that during this very short span of service as a daily wage the respondent had committed the misconduct which had been duly proved. Having held so, the Tribunal was expected to dismiss the Complaint filed by the respondent. It could not have passed the order of reinstatement with continuity in service in favour of the respondent on the basis that initially the appellant had committed a breach of Section 33 (2) (b) of the Act. It is true that the appellant had not applied for the necessary approval as required under that section. That is why the complaint was filed by the respondent under Section 33A of the Act. That complaint having been filed, it was adjudicated like a reference as required by the statute. The same having been done, and the misconduct having been held to have been proved, now there is no question to hold that the termination shall still continue to be void and inoperative. The de jure relationship of employer and employee would come to an end with effect from the date of the order of dismissal passed by the appellant. In the facts of the present case, when the respondent had indulged into a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service. The learned Single Judge of the High Court as well as the Division Bench have fallen in the same error in upholding the order of the Tribunal.”



5. Issue notice. Mr.Akshay Goel, learned counsel accepts notice on behalf of respondent no.1.
6. Learned counsel for the petitioner submits respondents no.2 and 3 are the proforma parties and no relief has been claimed against them.
7. Learned counsel for respondent no.1 submits that in fact the present application has been moved only to delay the proceedings. Learned counsel further submits that the matter is fixed tomorrow for the cross-examination of the claimant-workman and by way of filing the present petition, the intention of the petitioner-management is to delay the trial.
8. Section 33 of the Industrial Disputes Act provides that no employer shall during the pendency of any conciliation proceedings before a conciliation officer or a board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service as applicable to them before the commencement of such proceedings. The change of service conditions cannot be made in regard to the matter connected with the dispute. Section 33 of the ID Act also provides that no employer shall discharge or punish any workman, whether by dismissal or otherwise, unless the workman concerned in such a dispute is guilty of any misconduct connected with the dispute.
9. However, Section 33 provides that the employer can do so with the express permission in writing to the authority before which the proceeding is pending. Section 33 A of the ID Act carves out a “special provisions for adjudication as to whether conditions of service



etc., changed during the pendency of the proceedings”. In the present case, the respondent workman has invoked the jurisdiction under Section 33 A of the ID Act. Learned tribunal has specifically framed following two issues:

1. Whether the proceeding is maintainable as filed u/s 33A of the ID Act.
 2. Whether the service of the claimant was illegally terminated by the management during the pendency of the industrial dispute and whether there was violation of the provisions of Section 33 (2) (b) of the ID Act.
10. The fact that whether the respondent-workman falls within the definition of “workman” definitely comes within the ambit of the first issue which is whether the proceedings is maintainable as filed under Section 33 of the ID Act. The proceedings would be maintainable only if respondent falls within the definition of “workman”. Issue no.1 would cover whether the respondent-workman falls within the definition of ‘workman’ as provided under the I.D.Act.
11. In regard to the second issue, I consider that the issue as to the justness and proper enquiry as conducted against the complainant will also be included. However, the problem arises on account of the observation of the learned CGIT where it says that the scope of Section 33 is never to adjudicate the correctness of the action taken or fairness of domestic enquiry conducted. Such observation is in teeth of the judgment in ***Rajasthan State Road Transport Corporation*** (*supra*) as cited by learned counsel for the petitioner. In this case, the Supreme Court had *inter alia* held that if the tribunal accepted that the workman had



committed misconduct which has been proved, the order of reinstatement could not have been passed on the basis that initially, the management had committed a breach of Section 33 (2) (b) of the ID Act.

12. In that case also, as in the present one, the management had not applied for the necessary approval as required under Section 33 of the ID Act. Thus, while adjudicating the reference filed under Section 33 of the ID Act, the CGIT is bound to examine the justness and proper enquiry conducted against the workman.
13. In view of this, impugned order is modified to the extent that the learned tribunal shall examine and adjudicate the issue as to the justness of the enquiry as well whether enquiry has been conducted in accordance with law and the principles of natural justice. This court considers that this would fall within the ambit of issue no.2. Hence no new issue is required to be framed.
14. With the above observations, the petition is modified to that extent only and stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 31, 2022

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