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

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Reserved on: 17.10.2022

Pronounced on: 16.11.2022

+ W.P.(C) 7487/2005 and C.M. No. 5312/2005

C.P.W.D.

..... Petitioner

Through: Mr. Jaswinder Singh,
Advocate

versus

P.O. & ORS.

..... Respondents

Through: Mr. Anuj Aggarwal,
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 30.08.2004 ("**Impugned Award**"), passed by Respondent No. 1, the Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, New Delhi in I.D. No.101/96 titled as *Shri Surender Prasad, Asst. Wireman v. M/s Executive Engineer (Elect.)*. Vide the Impugned Award, the learned Labour Court directed the Petitioner/C.P.W.D to reinstate Respondent No.2/Workman on muster roll duty as casual worker w.e.f. 05.05.1989 in the pay scale of Rs. 800/- with incidental D.A, H.P.A., C.C.A, etc.

FACTS GERMANE TO THE PRESENT WRIT PETITION ARE AS FOLLOWS:

2. Respondent No.2, Sh. Surender Prasad, was appointed as Muster Roll Assistant Wireman by Executive Engineer, Electrical Division-12, CPWD w.e.f. 27.01.1983 and was drawing a salary of @ Rs. 800/- plus DA, CCA, HRA etc.
3. It is the case of the Petitioner that Respondent No. 2 last reported for his duty on 04.05.1989, but had slipped away before completing the duty hours. Hence, he was marked absent on that day. Thereafter, he did not report for duty and remained wilfully absent without sending any intimation about the same. Further, the Petitioner through the press releases which appeared on National daily came to know that Respondent No.2 has been arrested on 12.05.1989 and was in police custody. Pursuant to that the Petitioner enquired about the same from Inderpuri police station, Delhi, wherein he was informed that Respondent No.2 has been arrested on 12.05.1989 under Section 302 read with Section 34 IPC, P.S. Inderpuri in FIR P.S. 82/99. It is further the case of the Petitioner that Respondent No.2 was absconding from 05.05.1989 to 12.05.1989 and wilfully absented from duty w.e.f. 05.05.1989 to 12.05.1989 without sending any intimation to the Petitioner Management and concealed this very crucial piece of information about his arrest. As a result, the Petitioner Management terminated his services w.e.f. 05.05.1989 as per the

policy of the Petitioner as contained in CPWD Manual- III and policy letter dated 25.05.1991.

4. On 26.07.1994 Respondent No.2/Workman was acquitted in the said murder case by learned ASJ in Sessions Case No. 2/93 titled as '*State v. Upinder Prasad and Ors*'.
5. The CPWD Mazdoor Union took up the case of Respondent No.2 for reinstatement with the Petitioner vide its letters dated 11.08.1994, 08.09.1994 and 10.10.1994.
6. The Executive Engineer of the Petitioner Management vide its letter dated 31.08.1994, replied to Respondent No.2 stating that there is no vacancy and further directed Respondent No.2 to write to the concerned division so that they can regularize Respondent No.2 and post him in some other office. Relevant part of the letter dated 31.08.1994 is reproduced hereunder:

"Sh. Surinder Kumar was working as an Asstt wireman on muster roll. His work area was Mayapuri, sub division-3ED 12. He was an accused in a murder case. He was arrested by Inderpuri P.S. US 302/34 of IPC. That is why he was not taken on duty from 5.5.89. In this regard according to the DG's Order No. 45/4/91-EC-10 dt.23.5.91 if an employee is on muster roll he should not be taken back on duty unless he is acquitted of the offence by the Hon'ble court. In obedience to this order the employee was not taken on duty and if the person says that he has been terminated from duty, it would be false. According to your above mentioned letter it has come to the notice that the concerned employee has been acquitted from the court but this office has not received the copy of the court's order. It came to the knowledge only when the employee showed the copy of the court's order in which the Addl Sessions Judge Sh. M.S. Rohil had acquitted Sh. Surinder Prasad of the allegations because no evidence could be produced against him.

It is brought-to your notice that the vacancy in the muster roll has been filled by an employee and there is no vacancy in Mayapuri sub division. Therefore you please write to the concerned division so that they can regularize the employee and post him in some other office.

7. Consequently, Respondent No.2 raised an Industrial dispute before the Presiding officer, Central Government, Industrial Tribunal, Ansal Bhavan, New Delhi in I.D. no 101/1996 whereby he prayed as follows:

“ a) Award reinstatement of Shri Surender Prasad, as Asstt. Wireman w.e.f. 05.05.1989 in the same pay of Rs.800/- plus DA, HRA, CCA except increment as he was drawing at the time of termination with all consequential benefits;

b) Award/order which this Hon'ble Tribunal may deem fit and proper to meet the end of justice.”

8. On 21.03.2002, learned Labour Court passed an award directing the Petitioner to reinstate Respondent No.2 with back wages. Relevant part of the Award dated 21.03.2002 is reproduced hereunder:

“11. In view of the above discussions I am of the view that the action of the Management - Executive Engineer A.C, (Electrical) Division No 12, CPWD, New Delhi in terminating the services of the workman Shri. Surender Prasad w.e.f. 5.5.99 was arbitrary and illegal, which cannot be justified and (illegible). The alleged deemed termination deserves to be quashed. Workman deserves to be reinstated with full back wages according to rules w.e.f. 5.5.99 till the date of his reinstatement in services and all consequential benefits with immediate effect. The management is given two months' time to reinstate the workman in service and make full payment of back wages.”

9. Aggrieved by the Award dated 21.03.2002, the Petitioner preferred a Writ Petition, titled as ***CPWD v. Surender Prasad (Workman) W.P. (C) No. 401/2003*** in which this Court vide its order dated 18.03.2004 set aside the Award dated 21.03.2002 and remanded the matter back to the Central Government Industrial Tribunal. Relevant part of the order dated 18.03.2004 is reproduced hereunder:

“It will be appropriate under the circumstances if the petitioner is given an opportunity of arguing the matter particularly since no evidence has to be led and it does not appear that the petitioner was grossly negligent in handling the case.

Accordingly, the impugned award is set aside and the parties are directed to appear before the Central Government Industrial Tribunal on 26, April, 2004 for directions. Thereafter the learned CGIT will hear the parties on merits and pass an Award.”

10. Subsequently, on 30.08.2004, the learned Presiding Officer, Central Government Industrial Tribunal vide the Impugned Award decided the dispute in favour of Respondent No.2. The Petitioner preferred the present Writ Petition challenging the Impugned Award dated 30.08.2004.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Mr. Jaswinder Singh, learned counsel for the Petitioner initiated his arguments by submitting that the impugned Award is illegal and arbitrary as the learned Labour Court failed to appreciate the crucial piece of evidence and facts.

12. Learned counsel for the Petitioner further submitted that Respondent No.2 was involved in a heinous crime of murder and was arrested on 12.05.1989 and remained in custody for more than 48 hours without any intimation to the Petitioner Management. Learned counsel for the Petitioner pointed out that Respondent No.2 was absconding and wilfully absented himself from duty from 05.05.1989 till 12.05.1989. Further, he submitted that as per CPWD Manual Vol. III which regulates the services of work charged establishment, no relief could be granted to a muster roll employee in case of cessation of his services due to his wilful absence. Besides the above, as per the policy of CPWD enumerated in letter dated 27.05.1991, the services of the muster roll employees are deemed to have been terminated when such workman remains in police custody for more than 48 hours in relation to serious crimes like rape, murder etc.
13. It is the contention of the learned counsel for the Petitioner that the service of Respondent No.2 was terminated by the operation of law. Hence, he cannot be reinstated back in service on account of his acquittal in criminal case. Learned counsel relied on the judgment of the Bombay High Court in ***The Chipping & Painting Employees' Association Private Limited v. A.T. Zambre*** reported as ***1968 SCC OnLine Bom 88***:

“25. It will be noticed that under clause (2) a, workman who fails to report for work within a fortnight of the expiry of leave originally granted or subsequently extended “shall be deemed to have voluntarily abandoned his services” in the pool and shall not be allowed to resume his duties. The expression “deemed to have

voluntarily abandoned his services” is an inference to be drawn by a fiction of law from the fact that a workman has failed to report for work within a particular time. Question of intention as to whether a workman intended to abandon his services or not may be relevant in some cases for a finding of fact whether a workman has abandoned his services. But in cases where abandonment is to be inferred from a given fact by a fiction of law, question of intention would not arise, nor a question of actual abandonment.

In the case of St. Aubyn v. Attorney-General [[1952] A.C. 15.] , Lord Radcliffe observed at page 53 as under:

“...The word deemed is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible”.

14. Learned counsel for the Petitioner furthered his submissions by submitting that once the service of a casual worker is terminated by operation of the rules/standing orders/office order or administrative instructions, there cannot be any automatic reinstatement consequent upon his acquittal. He further submitted that the bar against engaging a muster roll labourer will continue for such period till the exoneration of the particular labourer. However, after such acquittal, he had to seek fresh employment and his prior alleged involvement in criminal case would not be a bar against him being considered for such fresh employment. However, this cannot be interpreted to mean that there is any automatic right for reinstatement.

15. Further, he also pointed out that there is no finding in the impugned Award with respect to the violation of the provisions of Industrial Disputes Act, 1947 (“**I.D. Act**”).
16. Mr. Jaswinder Singh further bolstered his submissions by relying on the Judgments of the Hon’ble Supreme Court in *Deputy Executive Engineer v. Kuberbhai Kanjibhai* reported as *AIR 2019 SC 519* and *BSNL v. Bhurimal* reported as (2014) 7 SCC 177 as well as of the Bombay High Court in *CH & P Employees Association v. A.T. Zambre* reported as *AIR 1969 Bombay 274*.
17. With these submissions, learned counsel for the Petitioner prays for setting aside of the impugned award.

SUBMISSIONS ON BEHALF OF RESPONDENT No.2

18. Learned Counsel for Respondent No.2, Mr. Anuj Aggarwal initiated his arguments by submitting that the present Writ Petition filed by the Petitioner is not maintainable as no substantial question of law is to be decided by this Court. He further submitted that the Petitioner had earlier filed a W.P (C) No.401/2003 with the same plea as taken in the present writ petition. However, the said writ petition was remanded back so that the management can be heard before the learned Labour Court. Now after the impugned Award has been passed, the Petitioner has again challenged the same with the same pleas as taken in the earlier writ petition.

19. The learned counsel for Respondent No.2 while relying on the Impugned Award submitted that absence of Respondent No.2 from duty is not wilful/deliberate/intentional. The said absence was on account of his alleged involvement in the murder case and his detention in police and judicial custody.
20. It is further the case of learned counsel for Respondent No.2 that Respondent No. 2 was initially appointed as Assistant Wireman on muster roll w.e.f. 27.01.1983 by the Petitioner/Management. Thereafter, he continuously performed his duties till his services were terminated on 05.05.1989. Learned counsel for the Respondent pointed out that the Management witness MW-2 himself deposed that the name of Respondent No.2 was deleted from the muster roll only on 21.06.1989. MW-2 also admitted that no notice was given to Respondent No.2 before his termination. According to the said witness, he had gone to the police station on 25.05.1989 and the name of Respondent No.2 was retained in the muster roll upto 21.06.1989 and was deleted thereafter. Learned counsel for Respondent No. 2 submitted that MW2 had admitted to the over-writing done in the muster roll. Hence, the muster roll has been tampered and is unreliable.
21. Learned counsel for Respondent No.2 tried to draw an inference from the evidence of MW2 that Respondent No.2 continuously worked w.e.f. 27.01.1983 till 05.05.1989. On 05.05.1989 he performed his duty from 2.00 P.M. to 10.00 P.M shift. He was thereafter picked up by the police for investigation at 11 PM. His arrest was recorded by the police and produced before the

Magistrate on 12.05.1989 in relation to a murder case. As on today, he was acquitted from the said charge. After his arrest, the Petitioner tampered with the attendance register and his presence on 04.05.1989 and 05.05.1989 was converted into his absence.

22. Learned counsel for Respondent No.2 further submitted that the services of Respondent No.2 were terminated without following the principle of natural justice. No notice was served upon Respondent No.2/Workman before terminating his services. It is the case of Respondent No.2 that since his termination order was a penal order casting stigma on him, therefore, his services could not have been terminated without following the principles of natural justice. It was further submitted by the learned counsel that the termination of Respondent No.2 was not a simpliciter discharge or simple termination but was camouflaged for serious misconduct.
23. Learned counsel for Respondent No.2 bolstered its submissions by relying on the judgments of *Delhi Cantonment Board v. Central Govt. Industrial Tribunal & Ors.* reported as *2006 SCC OnLine Del 97*, *Krushnakant B. Parmar v. Union of India*, reported as *(2012) 3 SCC 178*, *Nar Singh Pal v. Union of India and Ors.*, reported as *(2000) 3 SCC 588*, *Jasmer Singh v. State of Haryana*, reported as *(2015) 4 SCC 458*, *Harjinder Singh v. Punjab State Warehousing Corpn.* reported as *(2010) 3 SCC 192*, *Bharat Sanchar Nigam Limited v. Bhurumal*, reported as *(2014) 7 SCC 177*, *Municipal Corporation of Delhi v. Asha Ram & Another*, reported as *2005 (80) DRJ 750*, *M.C.D v.*

Praveen Kumar Jain and Others reported as (1998) 9 SCC 468, *Haryana Roadways, Delhi v. Thana Ram* reported as MANU/DE/4375/2012, *Md. Mazim v. District Transport Manager (Admn.) Orissa State Transport Services and Ors.* reported as MANU/OR/0124/1974, *State of H.P and Others v. Dr. Parvesh Thakur* reported as 2020 SCC OnLine HP 3474.

24. Lastly, Mr. Aggarwal submitted that a workman cannot remain a muster roll employee even after completion of six years of service. In the present case, Respondent No.2 was denied benefits of Section 25-F of the I.D. Act and even many of his juniors were regularized in terms of the order passed by the Hon'ble Supreme Court of India in *Surinder Singh & Anr., v. The Engineer-in-Chief, CPWD & Others* reported as ATR 1986 SC 76. With these submissions, learned Counsel for the Respondent prays for the dismissal of the present writ petition.

LEGAL ANALYSIS

25. This Court has given its mindful consideration to the rival arguments advanced by learned counsels for the parties and perused the documents placed on record and the Judgments relied upon by the parties.
26. There are two moot questions to be decided in the present matter:
- (i) Whether the Petitioner is justified in terminating the services of Respondent No.2
 - (ii) whether the Petitioner is justified in not reinstating Respondent No. 2 after his acquittal by court of law.

27. Before dealing with the factual matrix, it is necessary to analyze the policy of the Petitioner regarding the muster roll employees. CPWD Manual- III deals with the employment of the muster roll staff. They are temporary staff engaged for short duration and paid according to Minimum wages as prescribed by the Government from time to time. It appears that the Petitioner sought a clarification from Government of India, Directorate of Central Works, CPWD regarding the uniform steps to be taken with respect to the muster roll employees who were charged with serious offences like murder, theft, rape etc. Government of India, Directorate of Works, CPWD, vide letter dated 27.05.1991, clarified the position as under:

“1. The matter was discussed with the representative of the Union. The procedure adopted in CPWD is that whenever a muster roll worker/casual labour is arrested on severe criminal charges like murder, theft, rape etc. and is detained by the police in its custody for more than 48 hours, the token of such worker is taken by the Executive Engineer and he is not allowed to work till he is clearly exonerated by the Court.

2. Except where notice is necessary under any statutory obligation no notice is required for termination of services of the muster roll worker/casual labour. Their services will be deemed to have been terminated when they absent themselves on the close of the day. The existing practice should continue till some alternative is decided upon.”

28.A perusal of the first paragraph of the above letter clearly shows that the token of such worker is taken by Executive Engineer and he is not allowed to work as a muster roll/casual labour till the time he is clearly exonerated. Now the question is whether a

casual labour/muster roll worker is entitled for reinstatement after his exoneration.

29. The law relating to the service conditions of a casual labour/muster roll worker is well settled in India. Casual labour/muster roll worker is not a permanent employee of the Management. His work is temporary in nature. He works on a daily wage basis and is entitled to the wages for the days he performs his work. Management can terminate the services of a casual labour/muster roll worker by following the specific provisions of the I.D. Act. Management can terminate the services of a casual labour/ muster roll worker who has completed 240 days in a calendar year by giving one month's notice/one month's pay in lieu of notice. The reason for termination can be manifold, it can be due to cessation of work, non-satisfactory performance, unauthorized absence etc. As per the I.D. Act, the employer is entitled to terminate the service of a casual labour/muster roll worker by paying one month's salary. Once the termination is held to be valid, then the employer-employee relationship between the management and the muster roll labour is severed. Hence in case there is a re-engagement of the casual labour/muster roll worker, the same shall be a fresh appointment. He cannot claim any continuity in service qua his earlier employment with the Management. The new engagement will be on the basis of fresh terms and conditions as agreed between the parties and will not be treated as a continuation of the earlier employment.

30. With this background, it is necessary to examine the facts of the present case.
31. A perusal of the records of the present case reveals that Respondent No.2 last reported for his duty on 04.05.1989 but had slipped away before completing the duty hours and was thus marked absent on that day in the muster roll. Respondent No.2 was arrested by the police on 12.05.1989 under Section 302 read with Section 34 IPC, P.S. Inderpuri in FIR P.S. 82/99. As per the letter dated 21.05.1991, whenever a muster roll worker/casual labour is arrested on severe criminal charges like murder, theft, rape etc. and is detained by the police in its custody for more than 48 hours, the token of such worker is taken by the Executive Engineer and he is not allowed to work till he is clearly exonerated by the Court. In this case, Respondent No.2 remained in police custody for more than 48 hours in relation to a murder case and hence the Petitioner is justified in terminating the work of the Respondent w.e.f. 05.05.1989.
32. Now the second question is whether Respondent No.2 is entitled for reinstatement after his exoneration by the court of law. As discussed herein above, once the termination is held to be valid, there is no employer-employee relationship between the parties. In case Respondent No.2 wanted to get re-engaged with the Petitioner, he has to apply afresh and the Petitioner Management is entitled to decide the said request as per the situation prevailing at that point in time.

33. It is pertinent to mention here that even in the case of a permanent employee, after his acquittal from criminal charges, there is no automatic reinstatement. The competent authority is entitled to examine his case afresh and pass an order in accordance with law. Hence the delinquent officer can be reinstated only if his acquittal is an honourable acquittal and not one due to the 'benefit of doubt' by a criminal court.
34. In the present case, Respondent No.2 was on a muster roll employment with the Petitioner. His services were validly terminated w.e.f. 05.05.1989 as he was arrested and remained in police custody for more than 48 hours. He was acquitted by the court of law vide order dated 26.07.1994. Respondent No.2 approached the Petitioner for reinstatement. The Petitioner rejected the reinstatement on the ground that Respondent No.2 concealed material facts from them and remained in unauthorised absence. It is well settled principle of law that once the employer lost their confidence in the employee, the employer cannot be directed to reinstate the said employee. In the present case, Respondent No.2 attended the office of the Petitioner on 04.05.1989 and then slipped away from the office and never came back nor informed the Petitioner about the reason for his unauthorized absence. Later the Petitioner, through newspaper, came to know that Respondent No.2 was arrested by the police in relation to a murder case on 12.05.1989. For discharging the office of trust and confidence requires absolute integrity. Hence

in such cases, the Petitioner cannot be faulted for denying him reengagement.

35. A perusal of the impugned award shows that learned Labour Court directed the Petitioner to reinstate Respondent No.2 as a casual worker w.e.f. 05.05.1989 in the pay scale of Rs. 800/- with incidental D.A, HRA, CCA etc. The relevant portion of the impugned award, reads, inter alia, as follows:

"6. The management has not disputed the following policy decisions alleged to have been circulated by N.D.M.C. of Administration II CPWD vide letter dated 27.5.91 as mentioned in para 11 of the claim statement that "the matter was discussed with the representative of the union. The procedure adopted in CPWD is that whenever a muster roll worker/casual labour is arrested on severe criminal charge like murder, theft, rape etc., and is detailed by the police its custody for more than 48 hours the token of such worker is taken by the Executive Engineer and he is not allowed to work till he is clearly exonerated by the Court. Except where notice is necessary under any statutory obligation no notice is required for termination of services of the muster roll worker/casual labour. Their services will be deemed to have been terminated when they absents themselves on the close of the day. The existing practice should continue till some alternative is decided upon".

7. The perusal of the above policy decision shows that the management appears to have followed the second part of policy decision according to which services of a muster roll workman/ casual labour will be deemed to have been terminated when they/the absent or absents themselves on the close of the day. In the instant case as per the facts disclosed by the management in written statement the workman was present on 4.5.89 and thereafter absented himself and he did not attend muster roll duties. He did not inform the management respondent about his arrest and detention by the police is criminal case which according to the management amounted to misconduct. It is apparent that the management ignored the fact that the workman could not attend the duties as he was involved in a murder case and detained in police and judicial custody.

The management has not disputed the fact that the workman claimant was involved in a serious criminal case i.e. murder case and subsequently he was acquitted by the Sessions court and in view of this fact the policy decision contained in first part, referred to above that the workman will not be allowed to work till he is exonerated by the court will be applicable. It means that the workman when arrested in a serious criminal case i.e. murder case he cannot be allowed to work; Because of his involvement in such a criminal case the claimant was rightly not allowed to work by the department but the necessary consequence of his acquittal which is implicit in above referred policy decision is that the muster roll worker is entitled to be taken back on work after he is clearly exonerated by the court. The management has not disputed the claim of claimant who was admittedly muster roll worker that he was acquitted in the murder case which fact is removed from the photo copy of the judgment passed by Shri M.S. Khiila ASJ Ex.Wwa/6 placed on record. This further moved from the statement place on record. This fact is further proved from the statement of the claimant Ex.WWl. I am of the view that absence of the claimant due to his Involvement in the said murder case is not wilful i.e. Intentional or deliberate but is on account of Involvement and of his detention in police and judicial custody in the said offence of murder case which is a serious criminal case. He stands exonerated after his acquittal in said criminal case and is entitled to be taken back on duty or reinstated.

8. In view of the above discussions I am of the opinion that the claimant who was a muster roll worker/casual worker is entitled to be taken on work from the date he approached and requested the department to allow him to join as muster roll worker after his acquittal as per above the said policy decision. Workman is entitled to be reinstated in the pay scale of Rs.800/- with incidental D.A., H.P.A., C.C.A, etc. He be accordingly reinstated back on muster roll duty as casual worker w.e.f. of 5th of May 89.

Award is accordingly passed."

36. This Court has examined the impugned Award in detail. This Court is of the view that the interpretation adopted by the learned

Labour Court qua the letter dated 27.05.1991 is erroneous. The said letter only says that till the complete exoneration, the Management is not supposed to reinstate the workman who was charged with serious crimes. However, the said letter nowhere states that it is mandatory for the Management to reinstate the workman back in service once he is exonerated from criminal charges.

37. As held herein above, the Petitioner is justified in terminating the service of Respondent No.2 w.e.f. 05.05.1989 in view of the CPWD Manual Volume III and the letter dated 27.05.1991 as he was arrested by the police and remained in police custody for more than 48 hours. Hence the employer- employee relationship between the parties was severed w.e.f. 05.05.1989. Respondent No.2, who was a muster roll employee, has no right to ask for an automatic reinstatement with continuity in service. The Petitioner, as an employer, is well within its right to take a fresh decision on the reengagement of Respondent No. 2 after his acquittal by the criminal court. The Petitioner decided not to reengage Respondent No.2. The view taken by the Petitioner is one of the plausible views. The learned Labour Court is not justified in substituting its view with the Petitioner's view.

38. In view of the detailed discussions herein above, the present Writ Petition is allowed. Impugned Award is set aside. From the perusal of the record, it shows that this Court vide order dated 07.01.2008 extended the benefit under Section 17-B of the I.D. Act to Respondent No.2. 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. It is a well settled principle of law that even if the Court/Tribunal eventually upholds the termination order as being legal against the workman, yet the employer will have no right to recover the amount already paid by him to the delinquent workman pursuant to the order under Section 17-B of the I.D. Act during the pendency of the proceedings. Therefore, in view of the aforesaid settled position of law, it is clarified that the payment already made by the Petitioner to Respondent No.2 under Section 17-B of the I.D. Act is not recoverable.

39. Writ Petition is allowed. Pending application stands disposed off accordingly. No orders as to costs.

GAURANG KANTH, J.

NOVEMBER 16, 2022