



W.P.No.23347 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.09.2023
Pronounced on : 12.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.23347 of 2017
and W.M.P.Nos.7042 & 7044 of 2020

The Managing Director,
Sunbeam Generator (P) Ltd.,
Puducherry. ...Petitioner

Vs.

1. The Presiding Officer,
Industrial Tribunal cum Labour Court,
Puducherry.
2. Sub Beam Generators Thozhilalargal Sangam,
Rep. by its Secretary, Mr.E.Jayachandran,
Puducherry. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records on the file of the 1st respondent connected with the award dated 30.05.2017 passed in I.D.No.(L) 21 of 2014 and quash the same.



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For Petitioner : Mr.Karthik, Senior Counsel

for Mr.John Zachariah

for M/s.Fox Mandal & Associates

For Respondents : Mr.P.R.Thiruneelakandan, for R2

ORDER

This Writ Petition has been filed seeking quashment of the award of the 1st respondent dated 30.05.2017 made in I.D.No.(L) 21 of 2014.

2. The case of the petitioner is that, the petitioner company is engaged in manufacture and sale of Generators and has a factory at Puducherry. Though the petitioner company is giving its workmen the best possible wages and other benefits, the employees of the petitioner company are constantly involved in anti-establishment activities and are disturbing the smooth functioning of the company, which resulted in the Management taking disciplinary action against the individual workmen and after conduct of enquiry, the order of dismissal had come to be passed. In such circumstances the petitioner union submitted a representation before the Labour Officer on 09.03.2012, for which, a notice of remarks alone was sent to the petitioner on 14.03.2012,



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however, nothing further transpired. While so, pursuant to the other representation given by the 2nd respondent union on 03.05.2013, a notice of conciliation dated 11.09.2013 was sent to the petitioner. Thereafter, the Labour officer submitted a Conciliation failure report before the Government of Puducherry on 13.01.2014 and the dispute was referred by the Government and was subsequently taken on file in I.D.No.(L) 21 of 2014, in which an award dated 30.05.2017 came to be passed, directing the petitioner management to reinstate the workmen along with 50% back wages. Challenging the same, the petitioner has come up with this Writ petition.

3. Learned counsel for the petitioner submitted that, the various misconduct committed by the individual workmen involved in the present dispute are:

Mr. K. Sivakumar is a habitual offender and indulged in the act of beating up his Superiors and Senior officers on 27.09.2010 for which he was suspended for 5 days from 29.09.2010 to 03.10.2010. He also indulged in an act of gross negligence when assembling a machine, which caused extensive damage and production loss and for which, he



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was issued with a warning letter dated 02.11.2011. On 23.02.2012, Mr. K. Sivakumar, was found continuously speaking on his cell phone at the work and since speaking on cell phone at the work place is prohibited, he was issued with a show cause notice dated 23.02.2012, however, he gave an evasive reply and continued to indulge in blatant disregard of the rules. Since the act of Mr. K.Sivakumar was intolerable and continuous, an enquiry was held through an independent Enquiry Officer and the decision of the Company was communicated to Mr. K. Sivakumar by a letter dated 25.02.2012. The Enquiry Officer conducted the enquiry by giving all opportunities and following the principles of natural justice and upon the charges being proved, he was terminated from service on 17.10.2013.

Insofar as **Mr. S. Sivakumar** is concerned, he also indulged in various misconducts by abusing and threatening his co-workers and he forcibly collected money from the co-workers under the guise of donation, for which he tendered an apology, vide letter dated 31.07.2009, and he is also a habitual drunkard and reports for duty after consuming liquor and only on sympathetic grounds, he was allowed to resume duty. Further, on 01.10.2009, the said S.Sivakumar, indulged in an act of



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indiscipline with his superior officers, for which he was transferred to another department and he was a habitual absentee and also misappropriated the Company stationeries and machines for his own use, for which he was given oral warnings. Further, on 24.02.2012 he misbehaved with a co-worker inside the factory premises during work hours and made damaging remarks against the management. Therefore, the Enquiry Officer was appointed, who conducted enquiry by giving all opportunities and following the principles of natural justice and upon the charges being proved, the said S.Sivakumar was terminated from service on 17.10.2013.

Insofar as **Mr.P.Munusamy and Mr.Jayachandran** are concerned, due to exigency of work, they were transferred to other offices of the petitioner management, however, they refused to receive the transfer order and did not report to duty, for which, the Enquiry Officer was appointed, who conducted enquiry by giving all opportunities and after following the principles of natural justice and it is a clear case of voluntary abatement of duty in which the question of non-employment does not arise.



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Similarly one Mr.**P.Gopalasamy**, who was also transferred to Chennai on 07.03.2012 and though, he reported for duty on 21.03.2012, subsequently, he did not attend his duties and deserted his transferred place, for which as well, an Enquiry conducted the enquiry by the Enquiry officer, which is also a similar case of voluntary absence from duty in which also the question of non-employment does not arise.

4. Learned counsel for the petitioner further submitted that, all the workmen involved in the dispute have committed grave misconduct and the same were clearly established in the domestic enquiry and the Domestic Enquiry Officer has held the charges proved as against the respective workmen/members of the 2nd respondent union and thereby, the orders of dismissal came to be passed. However, on extraneous consideration, the Labour Court, passed a perverse order as against the petitioner management, which is not sustainable. He further submitted that, as no conciliation proceedings have been initiated as against the petitioner management immediately after the dismissal orders, thereby, in the absence of any such conciliation proceedings, the petitioner management has not obtained any approval under section 33 (2) (b) of



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the Industrial Disputes Act. Further, even if there is any violation of Section 33 of the Industrial Disputes Act, the remedy available to the workmen is to file a complaint under Section 33-A of the said Act and if any such dispute is raised, the Labour court, while exercising the power conferred under Section 33 of the said Act, can consider the issue as a dispute and can allow the petitioner to examine the witnesses to prove the misconduct committed by the respective workmen. In the present case, the petitioner management adduced the evidences before the Labour court by examining RW1 and marked Ex.R1 to R57, whereas, though several allegations were made against the respective workmen, the 2nd respondent union had examined only two witnesses and marked Ex.P1 to P30. It is the further grievance of the learned counsel for the petitioner management that, though, the petitioner management clearly established the misconduct committed by the respective workmen, who are the members of the 2nd respondent union, before the Labour court, the Labour Court, mechanically passed the present impugned award, on the ground that, the mandatory provisions contemplated under Section 33(2)(b) of the Industrial Disputes Act is not followed by the petitioner



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management. Further, even when a complaint is filed under Section 33(1)(b) of the said Act, the Labour Court has to adjudicate the same, as if it is a dispute referred to it. Further, the workmen cannot be granted relief on the ground of mere violation of Section 33 of the ID Act.

5. In order to substantiate his contention, he relied upon the decision of the Apex court in the case of ***Rajasthan State Road Transport Corporation & Another Vs. Satya Prakash*** reported in ***2013 (9) SCC Page 232***, wherein the Apex Court held as under :-

11. The appellant is aggrieved by the relief granted to the respondent on account of the breach of Section 33 (2) (b) of the I.D. Act, since the Tribunal had otherwise held that the misconduct had been proved. Learned counsel for the appellant Mr.Puneet Jain, drew our attention to the judgment of this Court in the case of The Bhavnagar Municipality vs. Alibhai Karimbhai and Ors., wherein this Court has held in paragraph 15 that when a Complaint under Section 33-A is filed, after finding out whether there is a breach of the provision of Section 33, the Labour Court or Tribunal is supposed to treat the Complaint under Section 33-A in the same manner as in the case of a Reference under Section 10 of the Act. In the present matter also both the parties were allowed to lead evidence on the merits of the controversy before the Tribunal, and then the finding was arrived at as in a Reference. The submission is that thereafter the workman cannot be allowed to raise the plea of the initial breach of Section 33(2)(b) of the Act.



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12. *Alternatively, it is submitted that it is essentially a case of technical breach of Section 33, and in another judgment in the case of United Bank of India vs. Sidhartha Chakraborty, this Court has granted liberty to the employer in the event of such a breach to take action in terms of Section 33 (2) (b) of the Act. Therefore, it is submitted that if the initial failure to apply for approval is yet to be held against the appellant, such a liberty be granted to the appellant in the present case also.*

13. *Learned counsel for the respondent Mr. Mishra, on the other hand submits that the fact remains that in the instant case the appellant had not complied with Section 33(2)(b) of the Act and, therefore, the consequence has to follow, and that is the view taken by the Industrial Tribunal, which has been confirmed by the learned Single Judge as well as the Division Bench of the High Court, and that this Court should not interfere therewith. He submits that in case if any liberty is given to the appellant to apply under Section 33(2)(b) at this stage, the respondent be also given opportunity to defend.*

14. *We have noted the submissions of both the counsel. In the instant case, the Tribunal while deciding the Complaint has gone into the merits of the case as in a Reference, given full opportunity to the parties, and then held in paragraphs 8 and 9 of its award dated 3.12.2002 that the charge of not issuing three and a half tickets, despite collecting the fare, was proved. This finding is not disturbed by the High Court. The Civil Court has also given the same finding by its earlier judgment and order dated 24.11.1994, which is not challenged by the respondent. Both these proceedings were initiated by the respondent/workman and resulted into a decision against him on merit. The decision of the Civil Court was however not placed before the Industrial*



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Tribunal either by the respondent or by the appellant. The question which arises for our consideration on this background is as to whether the Tribunal was right in awarding reinstatement with continuity of service in the proceeding under Section 33A of the Act which arose out of the initial breach of Section 33 (2) (b) of the Act by the respondent.

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17. In paragraph 13 of the judgment in Ram Gopal Sharma case, this Court noted that the contravention of Section 33 invites a punishment under Section 31 (1) of the Act. Hence, the proviso to Section 33(2)(b) cannot be diluted or disobeyed by an employer. It is a mandatory provision made to afford a protection to the workmen to safeguard their interest, and it is a shield against victimization and unfair labour practice by an employer during the pendency of an industrial dispute. Therefore, the order made without complying with the said proviso is void and inoperative.

18. Having noted this, what is observed by this Court in paragraph 14 of the judgment is relevant for our purpose. The relevant part of this para reads as follows:-

“14. Where an application is made under Section 33 (2) (b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. If the authority refuses



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to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval”

(emphasis supplied)

The same paragraph lays down that if a workman is aggrieved by the approval, his remedy is to file a Complaint under Section 33-A of the Act. This section has a definite purpose to serve viz. to provide a direct access to the Tribunal and thereby a speedy relief, instead of seeking the time consuming procedure of seeking a Reference under Section 10 of the Act. In that complaint, however, the employee will succeed only if he establishes that the misconduct is not proved and not otherwise, and if he does succeed in so establishing, it will relate back to the date on which the dismissal order was passed by the employer as if it was inoperative. This remedy is independent of the penal consequences which the employer may have to face under Section 31 (1) of the Act if prosecuted for the breach of Section 33.



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19. This Section 33-A reads as follows:-

“33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding.--Where an employer contravenes the provisions of section 33 during the pendency of proceedings [before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal] any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner,-

a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.”

(emphasis supplied)

As can be seen, sub-section (b) of Section 33A clearly lays down that when such a Complaint is made, the Tribunal shall adjudicate upon the Complaint as if it were a dispute referred to it, and shall submit his or its award to the appropriate Government, and the provisions of this Act shall



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apply accordingly. Thus, in that complaint, the employee will have to prove his case on merits.

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22. This legal position has been reiterated in the judgment of the Constitution Bench in *P.H. Kalyani vs. M/s Air France Calcutta* which has been quoted with approval in paragraph 17 of *Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd.* In that matter, the respondent employer had applied under Section 33(2)(b), but the workman had also filed a Compliant under Section 33-A which was heard like a Reference. Evidence was led therein by the parties, and on its own appraisal of the evidence the Labour Court had held that the dismissal was justified. This Court accepted that finding, and it was held that the approval when granted will relate back to the date when the order of dismissal was passed. On the other hand, if the employer fails to prove the misconduct, the order of dismissal will become ineffective from the date when the dismissal order was passed by the employee. This legal position has been reiterated from time to time (see for instance *Lalla Ram vs. D.C.M. Chemicals Works Ltd.*). In *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*, the Constitution Bench endorsed the view taken in *Strawboard and Tata Iron & Steel Co.* and held that the view expressed in *Punjab Beverages* was not correct.

23. In the present case, the Tribunal accepted that during this very short span of service as a daily wager 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



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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 33-A 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.

24. Since the Complaint was decided like a reference, and since we are holding that it ought to have been dismissed, we are not required to go into the alternative submission that the appellant be given further liberty, to de novo apply under Section 33 (2) (b) on the lines of the judgment in United Bank of India (supra). However, we make it clear that once the Complaint under Section 33A is decided, there is no question of granting any such liberty. Besides, we would like to observe that such liberty was given in the case of United Bank of India (supra) “considering the background facts of the case” as stated in paragraph 11 of the said judgment.

6. He further relied upon the decision of the Apex Court in the



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case of ***Management of Karur Vysya Bank Vs. S.Balakrishnan*** reported in ***2016 (12) SCC 221***. For better appreciation, the relevant portion of the said decision is extracted hereunder:-

9. If jurisdiction of the Labour Court/Industrial Tribunal under the provisions of the Act while considering a reference is what has been described above and a complaint under Section 33-A of the employee is in effect a reference, we do not see how the award Passed by the Industrial Tribunal in the present case can be sustained in the face of the findings recorded therein as noticed above.

10. Section 33-A of the Act enjoins upon the industrial adjudicator a twin duty. The first is to find out as to whether the employer has contravened the provisions of Section 33 [in the present case by not filing an application seeking e approval under Section 33(2)(b) of the Act]. However, a finding on the above question would not be conclusive of the matter and the industrial adjudicator is required to answer the further question as to whether the dismissal or such punishment as may have been imposed on the workman is justified in law. The issue of sustainability of the punishment imposed naturally has to be decided within the contours of the reference jurisdiction as indicated above.

7. Reliance was also placed on the decision of the Apex Court in the case of ***Managing Director, North-East Karnataka Road Transport Corporation Vs. Shivashaanappa*** reported in ***2017 (16) SCC 540***. For



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better appreciation, the relevant portion is extracted hereunder:-

2. *The Labour Court by order dated 25-5-2011 in para 34 thereof held as follows:*

"34. The question arises whether the order of dismissal is proportionate to the legal misconduct. It is proved from the evidence that the first party has obtained employment by producing the fabricated documents. This act on the part of the first party is grave misconduct. Such misconduct or misdeed cannot be ignored. Under such circumstances the order of dismissal is proportionate to proved charges. I do not find any circumstances to say that the order of dismissal is disproportionate to proved charges. Therefore. I answer these issues in favour of the second party respondent."

3. *The respondent workman moved the High Court against the aforesaid order of the Labour Court. A learned Single Judge of the High Court by order dated 23-07-2013 took the view that as another proceeding under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") was pending, prior approval under Section 33(2)(b) of the Act was required to be taken by the employer. Such prior approval was however neither sought for nor was granted. The dismissal of the workman was, therefore, held to be void ab initio. The said order of the learned Single Judge of the High Court has been affirmed in the writ appeal. Aggrieved, the employer has instituted the present appeal under Article 136 of the Constitution of India.*

4. *Is the High Court correct in taking the view as*



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noticed above. In Karur Vysya Bank Ltd, V. S.Balakrishnan while dealing with a situation of absence of any approval under Section 33(2)(b) of the Act read with Section 33-A thereof, this Court had taken the view that a finding on the question as to whether f the employer has contravened the provisions of Section 33(2)(b) would not be conclusive of the matter and

"The industrial adjudicator is required to answer the further question as to whether the dismissal or such other punishment as may have been imposed on the workman is justified in law". (SCC p. 224, para 10)

5. This Court also noticed a similar view taken in Rajasthan SRTC v. Satya Prakash. Additionally in para 13 of the Report in Karur Vysya Bank Ltd., this Court had an occasion to notice the perceived dichotomy between the the provisions contained in Section 33(2)(b) and Section 33-A of the Act and attempted resolutions thereof by the legislature. The aforesaid para 13 may be noticed in detail by extracting the same:

"13. The second issue that we had occasion to deal with in the course of the debates that had taken place on the issues/questions arising in the present case is with regard to what we perceive is a dichotomy between the provisions contained in Section 33(2)(b) and Section 33-A of the Act. In this regard, we take notice of the fact that the employer who does not carry out his/its statutory obligation under Section 33(2)(b) and yet prevents the workman from working and



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earning his wages virtually gets the benefit of an adjudication that the workman has been compelled to undertake in default of the statutory obligation on the part of the employer. The jurisdiction under section 33(2)(b) is bound to be and in fact is narrower than the reference jurisdiction under Section 33-A. It is common experience that litigations including industrial references in this country have the tendency to remain pending beyond necessary and acceptable limits. In such a situation, can the workman be made to suffer by being made to stay away from work despite the lapse on the part of the management in moving the industrial adjudicator for approval under Section 33(2)(b) of the Act. In other words, does he have to await the as outcome of his complaint under Section 33-A which itself is to be treated as a reference under Section 10. The power of the Industrial Court to pass interim orders is hardly an answer. Our anxiety in this regard is aggravated by the fact that the present position in law is proposed to be extended in the proposed Labour Code on the Industrial Relations Bill, 2015 which contemplates "revision of the existing labour law". We, therefore, had thought it proper to request either the learned Attorney General for India or the learned Solicitor General of India to appear before the Court and to assist us on the issue. The Court acknowledges the assistance rendered by both the learned Attorney



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General for India and the Solicitor General of India who have appeared in Court. The learned Attorney General for India has assured the Court that the matter will receive the attention of the highest authorities of the State. We, therefore, leave the matter to the wise decision of the executive and legislative arm of the State and end the issue on the above note."

6. In the present case, the High Court interfered with the punishment merely on the ground that the requirement under Section 33(2)(b) of the Act had not been complied with and prior approval had not been taken. The same, as already held by this Court, could not have authorised the High Court to interfere with the punishment imposed without an adjudication on the validity of the dismissal. In the present case, such an adjudication had already been made and, therefore, the issue of the validity of the dismissal of the workman must be understood to have been gone into and decided. In such a situation, the High Court ought not to have interfered with the punishment imposed without considering the findings of the Labour Court on the correctness of the charges brought against the workman. The said aspect of the order of the High Court has, however, not been assailed by the Workman. The aforesaid part of the order may, therefore, be understood to have been accepted by the workman. In the above situation, the remaining part of the order i.e. the High Court interfering with the punishment imposed would clearly be contrary to the view expressed by this Court on the issue in Karur Vysya Bank Ltd.

Hence, the present impugned award dated 30.05.2017 passed by the

1st respondent in I.D.No.(L) 21 of 2014 on the ground of alleged



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violation of Section 33(1)(b) is liable to be set aside and accordingly, he prayed for appropriate orders.

8. Learned counsel appearing for the 2nd respondent submitted that, the 2nd respondent union was formed in the year 2012 for the welfare of its members, who are the employees of the petitioner management. While so, the petitioner management, in order to curtail the trade union activities, as an act of victimisation, suspended some of the officer bearers and transferred some of them. Aggrieved by the above said unfair labour practice of the petitioner management, the 2nd respondent union raised a dispute dated 09.03.2012 before the labour officer conciliation and another complaint dated 07.08.2012, seeking to protect the service conditions of the officer bearers. While so, one K.Sivakumar and S.Sivakumar, the honorary president and the president of the 2nd respondent union respectively were placed under suspension and the workers namely P.Munusamy, E.Jayachandran and P.Gobalasamy were transferred and subsequently suspended for not accepting the transfer order. Hence, the 2nd respondent union raised another dispute, vide complaint dated 03.05.2013. Further pursuant to request made by the



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petitioner management, the conciliation officer directed the respective workmen to co-operate for the enquiry and also directed the petitioner management to reinstate the said workmen and advised the petitioner not to terminate the said workmen during the pendency of the conciliation proceedings. While such being the case, the petitioner management appointed its own Company advocate as the enquiry officer, who acted in a biased manner and had not conducted the enquiry in fair and proper manner and submitted the enquiry report to the petitioner management and the same was not furnished to the workmen concerned, and subsequently, terminated the services of the workmen namely K.Sivakumar, S.Sivakumar and P.Munuisamy, without obtaining prior permission and without submitting appropriate approval petition, which is a clear violation of Section 33 of the ID Act and also a wilful disobedience of the advice given by the Labour officer conciliation.

9. Thereafter, as no amicable settlement was arrived on the dispute raised by the 2nd respondent with regard to protection of service condition and non-employment of the respective workers, the Labour officer submitted his conciliation failure report dated 03.01.2014, which



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is marked as Ex.P25, pursuant to which, the Government, vide order dated 02.04.2014, referred the dispute for adjudication and the same was numbered as I.D.(L).No.21 of 2014. Further, even before the Labour court, though the petitioner management filed a reply statement dated 31.12.2014 for the claim statement dated 13.10.2014 filed by the 2nd respondent wherein the 2nd respondent specifically contented that enquiry was not conducted in fair and proper manner, however, the petitioner management has not sought for permission to adduce fresh evidence before the Labour court to prove that a fair and proper enquiry was conducted by the petitioner management and it did not request the labour court to decide the fairness of the domestic enquiry conducted as the preliminary issue. Thus, the labour court, after considering the evidences on record, passed the present award under challenge holding that, the termination orders passed as against the respective workmen were passed during the pendency of the dispute/conciliation proceedings, which is a clear violation of Section 33 of the ID Act and the domestic enquiry was not conducted in a fair and proper manner and thereby, directed the petitioner management to reinstate the respective



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workmen/members of the 2nd respondent union with 50% back wages and other attendant benefits which cannot be interfered with.

10. The learned counsel appearing for the 2nd respondent relied upon the decision of the Hon'ble Apex Court in the case of ***Delhi Cloth & General Mills Co. Vs. Ludh Budh Singh*** reported in ***CDJ 1972 SC***

056. For better appreciation, the relevant portion is extracted hereunder:-

“60. From the above decisions the following principles broadly emerge :

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. in such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry



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conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the- Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and



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before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider



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the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act.”

11. Learned counsel appearing for the second respondent union submitted that the mandatory procedure contemplated under section 33(1)(b) of the Industrial disputes act was violated by the petitioner management and the same has been elaborately considered by the labour court and thereby passed the present order under challenge, which requires no interference.

12. Heard learned counsel on either side and perused the material documents placed on record.

13. The two major issues arises for consideration in the present Writ Petition are:

(a) Whether the domestic enquiry is



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conducted in a fair and proper manner and;

(b) Whether the petitioner management followed the procedure contemplated under Section 33 (1) (b) of the ID Act, for terminating the respective workmen by obtaining necessary approval from the appropriate authority as is required u/s 33 (2) (b) of the ID Act.

14. Admittedly, the respective workmen were employed under the petitioner management and for alleged misconduct, some of the workmen were suspended and some of them were terminated from service. However, no approval or permission has been obtained from the authority before whom the dispute is pending as it is the case of the petitioner that if at all the workmen have any grievance, they have to resort to Section 33-A of the ID Act.

15. The main allegation made against the respective workman is that, some of the workmen have entered into the petitioner management premises and indulged in misconduct such as threatening the superior and have also assaulted the executives and some of the employees, who were transferred to other department / offices of the petitioner



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management have not accepted the transfer order and have not joined the duty and deserted the transferred places and refused to accept the transfer order. Therefore disciplinary proceedings were initiated and as the allegations made against the respective workman were proved, various punishments were imposed on the workmen. However, the labour Court, after considering all the above said facts, arrived a conclusion that the above said misconduct were not proved during the enquiry and the same was not again proved before the labour Court. Hence, the labour Court held that the domestic enquiry was not conducted as per procedure and the fairness of the enquiry challenged by the second respondent union has been made out and the Labour Court concluded that enquiry was not conducted in a fair and proper manner.

16. The whole factum of the case revolves around the necessity of the employer to obtain permission from the Labour Court/Tribunal with regard to the dismissal or discharge pending conciliation before the Conciliation Officer, more so, when Section 33-A of the ID Act gives shelter to the workman to make a complaint in writing and the workman having not resorted to the provision u/s 33-A, the act of the Management



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in not obtaining approval cannot be questioned. While it is the stand of the Management that the dispute before the Conciliation Officer is not a dispute within the meaning of Section 33(1) (b) of the ID Act, however, it is countered otherwise by the workmen.

17. In order to ascertain whether the petitioner management followed the procedure contemplated under Section 33 (1) (b) of the Industrial Disputes Act, it is necessary to advert to the same, which provision reads as under:-

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.



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(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],—

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.



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Explanation.—For the purposes of this sub-section, a “protected workman”, in relation to an establishment, means a workman who, being [a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, [an arbitrator, a] labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, [within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]

[Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.]



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33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—Where an employer contravenes the provisions of section 33 during the pendency of proceedings [before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention, may make a complaint in writing, [in the prescribed manner,

—
(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.]

18. There could be no quarrel with the fact that disciplinary proceedings were initiated by the Management against certain workmen for alleged misconduct resulting in the conduct of enquiry and, thereafter, passing various punishments, including dismissal from service. However, even pending the disciplinary enquiry, the Union had raised a dispute with regard to certain issues relating to the said workmen



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before the Conciliation Officer, more particularly, the dispute was raised by the Union on 9.3.2012 in relation to false charges, suspension and termination. The said fact is not disputed by the Management. Only after the said dispute was raised, the enquiry proceedings were taken up and completed, whereinafter, the orders of dismissal of the workmen from service had come to be passed.

19. In this backdrop, this Court has to see whether the compliance of Section 33 (1) (b) with regard to obtaining approval of the authority in writing is required.

20. To answer this question, it would be just and necessary for this Court to refer to the decision of the Apex Court in ***Jaipur Zila Sahakari Bhoomi Vikas ... vs Ram Gopal Sharma & Ors*** (2002 (2) SCC 244), wherein the Apex Court held as under :-

“Answer to the question on which conflicting decisions are rendered, as noticed above, depends on a fair reading and proper interpretation of Section 33(2)(b) of the Act. Prior to the amendment of 1956, provision contained in Section 33 corresponded to the present Section 33(1) only. The object behind enacting Section 33, as it stood before it was amended in 1956, was to allow continuance of



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industrial proceedings pending before any authority/court/tribunal prescribed by the Act in a peaceful atmosphere undisturbed by any other industrial dispute. In course of time, it was felt that unamended Section 33 was too stringent for it placed a total ban on the right of the employer to make any alteration in conditions of service or to make any order of discharge or dismissal even in cases where such alteration in conditions of service or passing of an order of dismissal or discharge, was not in any manner connected with the dispute pending before an industrial authority. It appears, therefore, that Section 33 was amended in 1956 permitting the employer to make changes in conditions of service or to discharge or dismiss an employee in relation to matters not connected with the pending industrial dispute. At the same time, it seems to have been felt that there was need to provide some safeguards for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. This position is clear by reading re- drafted expanded Section 33 in 1956 containing five sub-sections.

* * * * *

In the same judgment, it is also stated that "order of dismissal or discharge being incomplete and inchoate until the approval is obtained, cannot effectively terminate the relationship of the employer and employee and that if the approval is not accorded by the tribunal, the employer would be bound to treat the respondent as its employee and paying his full wages for the period even though the employer may subsequently proceed to terminate the services of the respondent".

* * * * *

Where an application is made under Section 33(2)(b) proviso, the authority before which the



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proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter



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adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the



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matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.

Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33A. There is nothing in Sections 31, 33 and 33A to suggest otherwise even reading them together in the context. These Sections are intended to serve different purposes.

21. In the aforesaid decision, the Apex Court had occasion to



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consider the scope of Section 33 (2) (b) of the Act with regard to dismissal, discharge, retrenchment or termination of a workman pending a dispute without resorting to getting approval from the Labour Court/appropriate authority vis-a-vis Section 33-A and it was held by the Apex Court that the procedure contemplated for obtaining approval of the appropriate authority before giving effect to the order of termination, discharge, dismissal or retrenchment of a workman is a mandatory prescription and there was no duty cast on the workman to resort to Section 33-A as what is provided for u/s 33-A is only an additional safeguard to the workman and the said safeguard to the workman cannot absolve the Management of its duty to obtain an approval.

22. Section 33 (1)(b) is a pari material provision to Section 33 (2) (b), though Section 33 (2) (b) has additional proviso, which requires to be complied with in addition to obtaining approval from the authority. Therefore, obtaining approval from the authority u/s 33 (1) (b) in respect of dismissal connected with the dispute.

23. In the case on hand, the Union had raised the dispute with



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reference to the charges, suspension and termination of the workmen by the Management as early as on 9.3.12. Only thereafter, enquiry was held against the workmen and they were visited with punishments, including dismissal from service. Such being the position as is borne out by record, it is mandatory for the Management to obtain the approval of the appropriate authority, as there is a clear prescription u/s 33 (1) (b) that *with regard to any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen connected in such dispute save with the express permission in writing of the authority before which the proceeding is pending.*

24. In the case on hand, a dispute in the form of conciliation proceedings was pending before the Conciliation Officer with regard to the charges, suspension and termination by the Management of its workmen. Such being the case, it is necessary for the Management to have obtained written permission from the authority prior to dismissing the workmen from service.

25. Merely because Section 33-A provides the workmen with an



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avenue to ventilate their grievance by filing a complaint in writing, if so aggrieved by the act of the Management, that would not be an arrow in the armoury of the Management to side-step Section 33 (1) (b) and not obtain approval in writing and leave the workmen to have his grievance redressed by filing a complaint in writing u/s 33-A. So long as the Management has not obtained approval as contemplated u/s 33 (1)(b), the dismissal of the workmen is inoperative and invalid.

26. If the contention of the Management is accepted that approval is not necessary or that the workman is entitled to file a complaint in writing u/s 33-A to ventilate his grievance, it would be wholly against the decision of the Apex Court in *Jaipur Zilla case*.

27. In the case on hand, the evidence of RW1 reveals that conciliation proceedings were pending before the conciliation officer on 07.03.2012, and the said conciliation proceedings has been marked as Ex.P2. Such being the case, the dismissal of the workmen in the light of the pending conciliation proceedings would squarely attract the invocation of Section 33 (1)(b) and necessarily the Management ought to



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have obtained express permission in writing from the authority before which the proceeding is pending, viz., the conciliation officer. However, in the case on hand, it is admitted that such permission was not obtained.

28. Though the learner senior counsel appearing for the petitioner management submitted that even if there is any violation of section 33 of Industrial Disputes Act, the relief available to the workmen is to file complaint under section 33 A of the Industrial Disputes Act and without doing the same, the second respondent union on behalf of the respective workmen raised industrial dispute before the labour court which is not sustainable, however, the said remedy does not confirm rights over the petitioner management to violate the procedure contemplated under section 33(2)(b) of the Industrial Disputes Act. However, the said contention is wholly unacceptable for the simple reason that a mandatory provision is strictly to be complied with irrespective of the fact that the workmen have been provided with a means to ventilate their grievance and the decision in *Jaipur Zilla case* directly pierces the case of the petitioner.



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29. Further, what is relevant to be pointed out is the fact that in case the Management has not placed the requisite evidence at the time of enquiry, it is open to the Management to place the documents before the Labour Court, which Court, as a fact finding authority, could appreciate the same. However, in the case on hand, no materials have been placed before the Labour Court for the Labour Court to appreciate the stand of the petitioner. It is also to be pointed out that insofar as infraction of Section 33 (1) (b) is concerned, no material whatsoever could establish the case of the petitioner, as a mandate under a statute is strictly to be complied with and documents cannot be a substitute to seek relaxation from the said mandate.

30. Further, the Labour Court has also arrived at a categorical finding that the Management did not conduct the enquiry in a fair and proper manner and no proper documentary evidence was placed. However, the Management did not take the opportunity to adduce additional evidence before the Labour Court to establish that the enquiry was conducted in a fair and proper manner and that the workmen were given opportunity to defend themselves. The Labour Court, on the



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materials placed before it has come to the conclusion, which cannot be said to be arbitrary or perverse.

31. In the light of the discussion made above, the finding arrived at by the Labour Court that the domestic enquiry was not conducted in a fair and proper manner by the petitioner management and they have also not followed the mandatory procedures contemplated under section 33 (2) (b) of the Industrial Disputes Act and passed the present impugned order which is wholly reasonable and justified and no interference is warranted with the same.

32. For the reasons aforesaid, this Writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

12.10.2023

skt

Index : Yes / No

Speaking order : Yes / No

NCC : Yes / No



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The Presiding Officer,
Industrial Tribunal cum Labour Court,
Puducherry.



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M.DHANDAPANI, J.

skt

Pre-Delivery order

in

W.P.No.23347 of 2017

and

W.M.P.Nos.7042 & 7044 of 2020

12.10.2023