



W.A.Nos.2934 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
05.09.2023	20.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.Nos.2934 of 2019, 1824 and 1825 of 2019
& 2142 to 2144 of 2013 and
C.M.P.Nos.3248 and 2731 of 2020

W.A.No.2934 of 2019

T.K.Srinivasan

... Appellant

..VS..

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Ramnarayan Mills Limited,
Therku Palayam Post,
Coimbatore - 641 020.
Rep. by its Managing Director

. .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent to set aside the portion of the order of this Court dated 24.06.2013, depriving the appellants with backwages and consequently direct the 2nd Respondent to pay full back wages with all attendant benefits in terms of the award passed by the 1st Respondent in I.D.No.455 of 2000 dated 04.08.2004.

For Appellants: Mr.G.B.Saravanabhavan
(in W.A.Nos.2934, 1824 & 1825/2019)
Mr.R.Parthiban (in W.A.Nos.2142 to 2144/2013)

For R1 : Court (in W.A.Nos.2142 to 2144/2013 and 2934,1824& 1825/2019)
For R2 : Mr.R.Parthiban (in W.A.Nos.2934, 1824 & 1825/2019)
: Mr.G.B.Saravanabhavan (in W.A.Nos.2142 to 2144/2013)



COMMON JUDGMENT

(By S.Vaidyanathan,J.)

Challenging the common order of the learned Single Judge dated 24.06.2013 in depriving backwages for the period from the date of dismissal viz., 21.04.2000 till the date of award viz., 04.08.2004, modifying the award of the Labour Court granting reinstatement with continuity of service and other attendant benefits, the Workmen filed Writ Appeals in W.A.Nos.2934, 1824 and 1825 of 2019.

2. The Management has preferred Writ Appeals in W.A.Nos.2142 to 2144 of 2013, challenging the order of the learned Single Judge dated 24.06.2013 in confirming the Award of Labour Court granting reinstatement with continuity of service barring backwages deprived supra for the period from 21.04.2001 to 04.08.2004.

3. Since the issue involved in all these Appeals are one and the same, they are taken up together and disposed of by a common Judgment.

4. For the sake of convenience and clarity, the parties are herein referred to as Workman and Management.

5. The facts in nutshell placed before this Court are as follows:



(i) The Workmen were working in the winding department of the 2nd Respondent and on 24.12.1999, they were all transferred to spinning department. Aggrieved by such transfer, Workmen raised Industrial Disputes through an unauthorised trade Union. In the meanwhile, the Management issued charge memorandum to them on 20.01.2010 alleging that they did not obey the orders of transfer. An enquiry was held into the charges against the Workmen in which the workmen were afforded sufficient opportunity. On enquiry, the Enquiry Officer held that the charges were proved. Based on the said report of the Enquiry Officer, the Workmen were dismissed from service by separate orders dated 21.04.2000. Thereafter, they raised Industrial Disputes before the Conciliation Officer. The Conciliation Officer issued a notice of hearing to the workmen on 02.05.2000. The conciliation ultimately failed on 16.05.2000. Thereafter, challenging the termination orders, they raised Industrial Disputes in I.D.Nos.455, 457 and 458 of 2000 before the Labour Court, Coimbatore. During the pendency of the above Industrial Disputes, the workmen filed I.A.Nos.464 to 467 of 2003 raising preliminary issue stating that the dismissal was wrongful, since no permission was obtained before such dismissal orders were issued as required under Section 33(2)(b) of the Industrial Disputes Act (in short 'the I.D.Act, 1947'). The Labour Court allowed all the interlocutory applications and accordingly allowed I.D.Nos.455, 457 and 458 of 2000, thereby directing the Management to reinstate the workmen into service with all continuity of service and backwages. Challenging the same, the Management has preferred the Writ Petitions in W.P.Nos.6249 to 6251 of 2005. The learned Single Judge vide order dated 24.06.2013 has partly allowed the Writ Petitions with the following observations:



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"(i) the award of the labour court setting aside the orders of dismissal of the workmen and ordering reinstatement with continuity of service is confirmed.

(ii) that part of the award directing the management to pay back wages to the workmen for the interregnum period alone is set aside."

6. Challenging the aforesaid order of the learned Single Judge, the Workman filed Writ Appeals in W.A.Nos.2934, 1824 and 1825 of 2019 and the Management has preferred the Writ Appeals in W.A.Nos.2142 to 2144 of 2013.

7. It is seen that Workmen concerned were employed by the Management and were dismissed from service on 21.04.2000. Admittedly, Industrial Disputes were pending before the Authority concerned and the Labour Court has marked the records filed before the authority as Ex.C1. In the Petition filed by the Workmen, it is stated as follows:

"4 (a) Bonus has to be paid for 1998-99;

(b) Cancel the Transfer Order, which transfers the employers who had worked for 15 years in Cone Winding Department to another Department, as if transferring daily wage employees;

(c) cancel the practice of marking RW to permanent employees by employing temporary employees in the Cone Winding Department and pay salary and other benefits for all such days. The employees in Cone Winding Department, who are affected are N.Velumani, R.Shanmugasundaram, T.K.Srinivasan."

8. The Labour Court, after analyzing the evidence on record, granted the relief sought by the Workmen with the following observations:

"It is clearly seen from Ex.C-1 that the above said Petition had been taken on file as Na.Ka.No.75/2000 and was pending as on



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24.04.2000 also, the date of dismissal of the Petitioners. It is also clearly seen from records that Notice had been sent to the Respondent and the Respondent had also participated as a party by filing their Counter Statement. It is seen that only 16.05.2000 a Failure Report on the Petitions of the Petitioners had been placed before the Government and copies of the same had been sent to both sides."

9. The Dismissal order dated 21.04.2000 has been marked as Ex.M-10 herein. Therefore, the contention of the Petitioners that prior permission ought to have obtained under Section 33 (1)(b) when the Petitions filed by the Petitioners questioning their transfer orders on the ground of illegality were pending and that during the pendency the petitioners have been dismissed on 21.04.2000, is not in a rejectable form. Therefore, the contentions of the Respondent that the reasons for the dismissal of the Petitioners are different from the issue pending before the Labour Officer; that there is no connection with each other; that hence there is no necessity for prior permission, are not in an acceptable form as seen from the above examination of issues. But at the same time, the decision of the Hon'ble Supreme Court cited by the Petitioners, which is applicable to the facts of the case before us, supports their contention that prior permission ought to have been obtained under Section 33 (1)(b). These Petitions are accordingly ordered by deciding that the Petitioners are entitled for the reliefs sought by them in their respective Petitions.

It is concluded that the Petitioners are entitled for the reliefs sought by them in their respective Petitions in I.A.Nos.464/2003, 465/2003 & 466/2003, and this Common Order is passed by deciding that these IA are allowable."

9. Before a Workman is dismissed from service, the Management must obtain prior permission of their action from the Authority concerned, as mandated under Section 33(1)(b) of the Industrial Disputes Act, 1947. The Hon'ble Supreme Court, while dealing with the scope of Section 33(2)(b) of the I.D.Act, 1947 in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others** reported in (2002) 2 SCC 244, held as follows:

"13. The proviso to Section 33(2)(b), as can be seen from its very



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unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

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



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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 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."

10. Though the Apex Court considered the issue pertaining to Section 33(2)(b) of the

Act, the same principle will apply to a case falling under Section 33(1), as the Management



ought to have sought appropriate permission in terms of the said provision. The Hon'ble Apex Court further categorically held that if the Management had not filed any application seeking approval of their action or rejected by the appropriate authority or the one filed is withdrawn by the Management, the Workman is deemed to be in service. For the sake of convenience Section 33 is extracted below:

"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.

(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, or 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.

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(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. 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



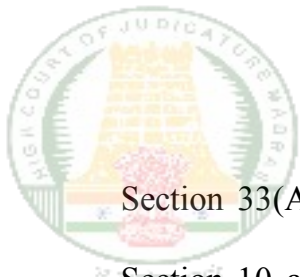
ground that any period specified in this sub-section had expired without such proceedings being completed."

11. Mr.R.Parthiban, learned Counsel appearing for the Management contended that in

the light of the judgment of the Apex Court in the case of **Rajasthan State Road Transport Corporation and Another Vs. Satya Prakash** reported in (2013) 9 SCC 232, the Labour Court ought not to have granted any relief to the Workmen. He also relied upon the judgment of three Judges' Bench of Supreme Court in **Managing Director, NEKRTC Karnataka Vs. Shivasharanappa** reported in (2017) III LLJ 513, in which, the Supreme Court referred to Two Judges' Bench of Supreme Court in **Rajasthan case supra** and held that that High Court is not justified in reduction of backwages. For the sake of brevity, the relevant paragraph is extracted below:

"22. This legal position has been reiterated in the judgment of the Constitution Bench in **P.H.Kalyani v. Air France Calcutta** reported in **MANU/SC/0137/1963: AIR 1963 SC 1756** which has been quoted with approval in paragraph 17 of Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd. (supra). In that matter, the Respondent employer had applied under Section 33(2)(b), but the workman had also filed a complaint under Section 33A 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 v. D.C.M. Chemicals Works Ltd.** reported in **MANU/SC/0268/1978: 1978 (3) SCC 1**]. In Jaipur Zila Sahakari Bhoomi Vikas Bank (supra) the Constitution Bench endorsed the view taken in Strawboard (supra) and Tata Iron & Steel Company (supra) and held that the view expressed in Punjab Beverages (supra) was not correct."

12. The aforesaid judgment pertains to a dispute under Section 33(2)(b) read with



Section 33(A) of the I.D.Act, 1947 and Section 33(A) is to be treated as a reference under Section 10 and the Supreme Court elaborately discussed the dichotomy provisions contained between Section 33(2) (b) and Section 33(A), whereas, in the present case on hand, the Workmen were made to suffer by making them to stay away from work despite the lapses on the part of the Management in moving the Industrial Adjudicator for approval as required under Section 33(2)(b) of the Act. The requirement of the provisions of Section 33(2)(b) has not been complied with. Three Judges' Bench of the Supreme Court in *[Managing Director, NEKRTC Karnataka Vs. Shivasharanappa]* has not referred to the decision of the Constitution Bench in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others*. In the light of the judgment of Apex Court in *Padma Sundar Rao (Dead) and Others V. State of T.N. and others reported in (2002) 3 SCC 533*, especially Paragraph No.9, the decision rendered by a Three Judges' Bench of the Supreme Court cannot override the judgment of the Constitution Bench. In *General Manager, Telecom Vs. A.Srinivasa Rao [1997 (8) SCC 767]*, the Apex held that the decision of the Larger Bench needs to be followed.

13. In view of the above, the order of the learned Single Judge in depriving backwages to Workmen has no legs to stand and is liable to be quashed and set aside. The Workmen are entitled to wages for the entire period from the date of dismissal till the date of the award, as if there is no order of dismissal in the eye of law.

14. It has been stated that all the employees were reinstated on 01.03.2005 and one



Mr.Srinivasan has resigned his job on 01.02.2016. Similarly, one N.Velumani who was reinstated on 01.03.2005 was dismissed from service on 13.06.2014 for other misconduct. That apart, one Shanmugasundaram also resigned his job on 01.03.2005 and subsequently died on 21.06.2019. However, he has attained the age of Superannuation on 15.06.2011 and his Legal Heirs have been brought on record, pursuant to the order dated 13.06.2023.

15. The Workmen viz., 1) T.K.Srinivasan is entitled to all the benefits till the date of resignation, 2) R.Shanmugasundaram is entitled to all the benefits as per the Award till the date of Superannuation i.e. on 15.06.2011 (since R.Shanmugasundaram is no more, his legal heirs are entitled to monetary benefits) and N.Velumani is entitled to all the monetary benefits upto the date of dismissal till 13.06.2014. Two workmen, namely, Velumani and Srinivasan and the legal heirs of one workman viz., Shanmugasundaram have filed separate affidavits, all dated 26.06.2023, giving up backwages from the date of dismissal till 28.02.2005, even though the award has been passed on 02.08.2004.

16. It was stated these three Workmen that all of them had joined as Apprentice and four years of service has been deprived. Though the Management has stated that they were initially engaged as Apprentices, the Workmen have not stated as to when they joined as Apprentices. Therefore, this Court is not inclined to go into that aspect in the present appeals as Velumani and Srinivasan and the legal heirs of Shanmugasundaram have given up backwages for the period mentioned *supra* and all the terminal benefits have been paid to them, except Gratuity



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from the date of dismissal to the date of reinstatement in the light of the fact that they have given up only backwages and not continuity of service, which they are entitled to and the period will have to be taken into account as if they were in service. Hence, the Management directed to pay the gratuity for the period from 21.04.2000 to 28.02.2005 within a period of one month from the date of receipt of a copy of this judgment, failing which, the workmen are entitled to interest at the rate of 10% per annum from the date of cessation of the employer-employee relationship. For Shanmugasundaram and Srinivasan, Gratuity shall be paid upto the date of cessation of employer-employee relationship. As far as Velumani is concerned, after his reinstatement, he was dismissed from service again on 30.06.2014 and the matter is subjudice before the Labour forum. It is open to the workman to accept the Gratuity amount upto the second date of dismissal, viz., 30.06.2014 based on the last drawn wages without prejudice to the rights pending before the Labour forum.

17. The Hon'ble Supreme Court in the case of *The Life Insurance Corporation of India vs. D.J.Bahadur and Others*, reported in *1980 AIR 2181* had held that the Award or the Settlement would continue to be in force till such time the same is substituted by another Award or Settlement. It goes without saying that if any complaint is made by the Workman under

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and

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arr/cad/ar

Section 29 of the Industrial Disputes Act, 1947, the persons who are falling under Section 32 of the Industrial Disputes Act, 1947, need to be prosecuted and the Government must sanction



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prosecution taking note of the decision of Apex Court in the case of **Rajkumar Gupta vs. Lt. Governor, Delhi** reported in **1997 (1) LLJ 994**. Once the prosecution is launched, the appropriate criminal court is expected to take up the matter and it shall proceed with the matter on a day-to-day basis without adjourning the matter beyond fifteen working days at any point of time so as to bring the issue to a logical end.

18. In the result, W.A.Nos.2934, 1824 and 1825 of 2019 filed by the Workmen are partly allowed and W.A.Nos.2142 to 2144 of 2013 filed by the Management are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[S.V.N., J.] [K.R.S., J]
20.10.2023

Index: Yes / No
Internet: Yes / No
Speaking Order/Non Speaking Order
arr/cad/ar

To:
The Presiding Officer,
Labour Court,
Coimbatore.
IN

PRE-DELIVERY JUDGMENT

W.A.Nos.2934 of 2019, 2142 to 2144 of 2013,
1824 and 1825 of 2019