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

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***Reserved on: 09.02.2023
Pronounced on: 16.02.2023***

+ **W.P.(C) 6908/1999**

I.A.R.I.

..... Petitioner

Through: Mr. Gagan Mathur, Mr. Varun
Kumar and Mr. Shitanshu,
Advocates.

versus

OM PRAKASH & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J

1. The Petitioner in the present Writ Petition is assailing the Award dated 23.03.1999 ("***Impugned Award***") passed by the Presiding Officer, Industrial Tribunal-II, Tis Hazari Courts, New Delhi in I.D Complaint No.1117/89 titled as '*Om Prakash Vs IARI*'.
2. The Respondent/workman filed an Application under Section 33A of the Industrial Disputes Act (**I.D. Act**) before the learned Labour Court alleging that the Petitioner/Management terminated his service during the pendency of an industrial dispute between the Petitioner/Management and its Workman relating to certain demands unconnected with the present dispute. The said action

of the Petitioner/Management has hence resulted in contravention of Section 33 of the I.D. Act. Vide the Impugned Award, the learned Labour Court held that the Petitioner/Management terminated the service of the Respondent/Workman in contravention of Section 33 of the I.D. Act. Learned Labour Court further held that the Petitioner/ Management failed to prove the misconduct and hence the termination was held to be illegal. In view of the same, the learned Labour Court directed the reinstatement of the Respondent/workman with back wages from June, 1989 onwards.

FACTS RELEVANT FOR THE DISPOSAL OF THE PRESENT WRIT PETITION ARE AS FOLLOWS:

3. The Respondent/Workman joined the service of the Petitioner/Management as a daily wager on 19.01.1982 and worked approximately for one month. Subsequently, Respondent/Workman was given appointment as SS Grade-I with effect from 30.05.1984. As per the said appointment letter, the Respondent/Workman was on probation for a period of 2 years from the date of appointment and thereafter, the confirmation was subject to the approval of the competent authority.
4. The Respondent/workman was detained by the police from 18.02.1985 to 27.02.1985 in connection with a theft case that occurred on 29.01.1985. The Respondent/Workman was released on bail on 27.02.1985 but he failed to report back to duty till 19.03.1985. The competent authority of the

Petitioner/Management on becoming aware of the misconduct of the Respondent/workman terminated his service vide letter dated 20.03.1985 by invoking clause 6 of the appointment letter under Rule 5 of CCS (TS) Rules.

5. The Respondent/Workman approached the learned Labour Court under Section 33A of the I.D. Act alleging that the Petitioner/Management terminated his service during the pendency of an Industrial dispute between the Petitioner/Management and its Workman relating to certain demands unconnected with the present dispute and hence, the Petitioner/Management contravened Section 33 of the I.D. Act.
6. The Respondent/Workman in his complaint alleged that he has not received any letter of termination. Hence, the Respondent/Workman was under the impression that he was under suspension due to his arrest. On 28.01.1989, he was informed by an officer of the Petitioner/Management that his services were terminated w.e.f. 20.03.1985. The Respondent/Workman, therefore, initiated a complaint for his reinstatement under Section 33A of the I.D. Act but subsequently withdrew the said complaint with liberty to file a fresh complaint on account of jurisdictional issues as is reflected in the order dated 15.02.1989. Thereafter, he filed the present Application under Section 33A of the I.D. Act.
7. The Petitioner/Management filed its Reply raising the preliminary objection qua the maintainability of the Application filed by the

Respondent/Workman. According to the Petitioner, the Respondent's application is barred by *res judicata* as he has withdrawn the earlier Application with same relief and no liberty was granted to the Respondent to file a separate Application. It is also the contention of the Petitioner that the Application under Section 33 of the I.D. Act is not applicable as the pending dispute is not related to the Respondent/Workman. The Respondent/Workman is further governed by CCS (TS) Rules, and hence, the complaint under I.D. Act is not maintainable.

8. The learned Labour Court, based on the contention of the parties, framed the following issues:

- “1. Whether the respondent violated Section 33 of the ID Act??*
- 2. Whether this complaint is barred under Section 11 of CPC?*
- 3. Whether this Tribunal has no jurisdiction to try the present complaint for the reasons given in Preliminary objection 3 &4 of the written statement filed by Respondent?*
- 4. Whether the complaint is time barred?*
- 5. Whether the termination of services of the complainant was illegal?*
- 6. Relief?”*

9. Learned Labour Court, vide the impugned Award, held that the Petitioner/Management terminated the service of the Respondent/Workman in contravention of Section 33 of the I.D. Act. The learned Labour Court further held that the Petitioner/Management failed to prove the misconduct and hence the termination was held to be illegal. In view of the same, the learned Labour Court

directed for the reinstatement of the Respondent/workman with back wages from June, 1989 onwards.

10. Being aggrieved by the impugned Award, the Petitioner filed the present Writ Petition.
11. Initially, the Respondent/Workman entered his appearance and filed counter Affidavit but since 2013, he has failed to appear in the proceedings. The summons issued to the Respondent's address returned with observation that 'he is not residing at the given address'. In view of the same, on two occasions, the Petitioner affected the service through publication. In view of the same, this Court proceeded with the matter after considering Counter Affidavit filed on behalf of the Respondent/Workman.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. Learned counsel for the Petitioner submitted that the Application filed by the Respondent/Workman under Section 33A of the I.D. Act is not maintainable. The industrial dispute which was pending before the learned Labour Court vide reference order No. F/24(226)/82-LAB-3811 dated 24.02.1982 was not connected to the Respondent/Workman. The said dispute was referred to the learned Labour Court even prior to the appointment of the Respondent/Workman. Hence, the learned Labour Court erred in entertaining the complaint filed by the Respondent/Workman.
13. Learned counsel for the Petitioner submitted that the Respondent/Workman was on probation and hence, not a regular

employee of the Petitioner. The Respondent/Workman is governed by CCS (TS) Rules and thus, Section 33 of the I.D. Act is not applicable to the present case.

14. Learned counsel for the Petitioner further submitted that the Respondent was arrested by the police and he remained in police custody for approximately one week. Further, the allegations against the Respondent are of serious in nature and these facts have not been denied by the Respondent. Hence, by invoking Rule 5 of the CCS (TS) Rules, the Petitioner has rightly terminated the service of the Respondent.
15. With these submissions, learned counsel for the Petitioner prays for the setting aside of the Impugned Award.

SUBMISSIONS OF THE RESPONDENT AS PER THE COUNTER AFFIDAVIT

16. The Respondent/Workman in his counter Affidavit averred that the Petitioner/management terminated his service in violation of Section 33 of the I.D. Act. It was further averred that his termination was illegal and without following the principles of natural justice. It is the case of the Respondent that he earlier filed a complaint under section 33A of the I.D. Act, but, later it was withdrawn as the same was filed based on mistaken facts. He asserted that the pending industrial dispute vide reference order No. F/24(226)/82-LAB-3811 dated 24.02.82 is having a direct impact on his service conditions and hence the learned Labour Court rightly decided the said issue in his favor. The Respondent
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vehemently contended that he is a regular employee of the Petitioner. Even though there was a 2 years' probation period, it is the case of the Respondent that he was a regular employee of the Petitioner and hence, the decision in the pending industrial dispute will have an impact on his service conditions.

17. With these averments made in the Counter affidavit, the Respondent made a prayer for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

18. This Court heard the arguments advanced by the learned counsel for the Petitioner and also examined the counter affidavit filed by the Respondent/Workman.

19. The issue which requires consideration of this Court in the present case is whether while terminating the service of the Respondent/Workman, the Petitioner/Management violated Section 33 of the I.D. Act or not. In order to examine the said question, it is important to examine Section 33 and 33A of the I.D. Act at the first instance:

“SECTION 33 OF THE INDUSTRIAL DISPUTES ACT

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.

(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.]

SECTION 33A OF THE INDUSTRIAL DISPUTES ACT

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.”

20. Section 33 of the I.D. Act imposes a prohibition on the employer from altering the terms of service of its workmen to their prejudice or to terminate their services during the pendency of any proceedings, including conciliation proceedings, in respect of an industrial dispute. Section 33 of the I.D. Act seeks to protect a workman from victimisation by the employer on account of him having raised an industrial dispute. Originally, the sole remedy available to an employee for a violation of his statutory right under Section 33 of the I.D. Act was to approach the appropriate Government under Section 10 of the I.D. Act. By introduction of Section 33A, the workman is now entitled to directly approach the Labour Court/Tribunal/Conciliation Officer, if the employer alters his service conditions in contravention of Section 33 of the I.D. Act, during the pendency of Industrial Dispute with the

Management. Hence, it is a swift procedure available to the Workman in case the management violates the mandatory conditions as specified in Section 33 of the I.D. Act.

21. Section 33A of the I.D. Act is attracted when the following conditions precedent are satisfied:

- (i) There has to be an industrial dispute pending between the management and the workman before the Labour Court/ Industrial Tribunal/ National Tribunal/ Conciliation Officer as the case may be.
- (ii) During the pendency of the said industrial dispute, there exists a violation of the mandatory provisions of Section 33 of the I.D. Act by the management.
- (iii) The Workman must be aggrieved by the said violation.

Where the conditions precedent as mentioned aforesaid are satisfied, the workman can directly approach the Labour Court/Industrial Tribunal/ National Tribunal/Conciliation Officer before whom the original proceedings are pending.

22. It is therefore evident that the Workman can invoke Section 33A of the I.D. Act only if there is a pending industrial dispute between the parties.

23. With this background, this Court would examine the facts of the present case. The Respondent/Workman was appointed as SS Grade-I w.e.f 30.05.1984. He was on probation for 2 years which can be extended subject to the approval of the competent

authority. The services of the Respondent/Workman were terminated vide letter dated 20.03.1985. The Respondent initially filed an Application under Section 33A of the I.D. Act before the learned Labour Court (ID Complaint No.355/89) contending that another reference was related to him. However, later he realized that the said reference was not related to him. In view of the same, vide order dated 03.07.1989, the learned Labour Court was pleased to permit the Respondent to withdraw the said application recording it as 'No Dispute Award.' Subsequently, he filed the present Application contending that the pending industrial dispute vide reference order No. F/24(226)/82-LAB-3811 dated 24.02.1982 is directly connected to him. In this regard, it is important to refer the said reference:

“(i) Now that the workman are entitled for the wages for the strike period (from 05.01.1979 to 15.04.1979), if so what directions are necessary in this regard?”

“(ii) Whether the two grades viz, Rs.210-290 & Rs.200-250, merit merged, if so, what directions are necessary in this behalf?”

“(iii) Whether the five-year assessment for the purpose of the promotion on the pattern of one applicable to Scientific and technical staff applicable to the supporting staff, if so what directions are necessary?”

24. This reference was made on 24.02.1982. On the date of the said reference the Respondent/workman was not even in the service of the Petitioner as he was appointed as a probationer only on 30.05.1984.

25. Be that as it may, this Court now proceeds to examine the finding of the learned Labour Court in the impugned Award:

“ In the present case the complainant has alleged that his services were terminated during the pendency of proceedings in aspect of an industrial dispute between the respondent/management and its employees regarding certain demands. That dispute was referred for adjudication to the Industrial Tribunal No. 1 by the Secretary (Labour) Delhi Administration vide reference order No. F-24(226)/82-Lab. Dated 24/2/82. That case was later on transferred to Industrial Tribunal No. 2. The respondent has not disputed these facts. The complainant reproduced in his complaint the terms of reference and he has also placed on record the copy of the award passed in that case by my Ld. Predecessor on 7.5.90. The respondent management has not raised any dispute in this regard also. There were three disputes referred for adjudication and the complainant alleged that he was concerned in the third terms of reference which is reproduced as under:-

“Whether the five yearly assessment for the purpose of promotion on the pattern of the applicable to scientific and technical staff be made applicable to the supporting staff, if so, what direction are necessary in this behalf”.

The respondent has pleaded that the complainant was not concerned in this reference made in 1982. However, those objection ius liable to be rejected. As noticed already it is clear from the offer of appointment dt. 30.5.84 given to the complainant that he was appointed as Supporting Staff Grade-I. The abovenoted dispute (being third terms of reference in reference order dt. 24.2.82) was in respect of the claim of the Supporting Staff of the respondent/management. Therefore, the present complaint who was also appointed as Supporting Staff Grade-I was concerned with the said dispute and even if he would still be concerned/interested in that dispute which had already been bound by the award in respect of that dispute as is provided under Section 198(3) (d) of the Act. A perusal of the award given in respect of the said industrial dispute shows that the said third term of reference was decided in

favour of the workmen. The present complainant, therefore, was a workman concerned in the above referred dispute”.

26. Learned Labour Court proceeded on the basis that the Respondent/Workman was also appointed as supporting Staff Grade-I and hence, the Respondent/Workman is also concerned with the outcome of the aforementioned reference, and therefore, the said reference can be treated as a ‘pending dispute’ between the management and the Respondent/Workman.
27. After examining the aforementioned reference, this Court is of the considered view that the learned Labour Court proceeded on a wrong premise. As discussed herein above, the rationale behind Section 33A of the I.D. Act was to avoid victimization. If there is an industrial dispute pending between the Management and Workman, there is a possibility that the Management may treat the said workman as a troublemaker and harass him. Hence, in order to avoid such victimization, the legislature introduced Section 33A of the I.D. Act. In the present case, neither the Management nor the Workman was aware that the pending reference was having any relationship with the Respondent/Workman. The Respondent/Workman himself initially approached the learned Labour Court contending that his case was related to another reference and later withdrew the same and filed the present complaint. Hence, there is no question of any victimization by the management as it is the consistent case of the Petitioner/Management that there is no industrial Dispute pending

between the parties. Any interpretation to the contrary would be defeating the whole purpose of Section 33A of the I.D. Act.

28. It is the contention of the Petitioner/Management that the Respondent/Workman was working as a probationer at the relevant time. Hence, the reference, which was pending, at best can be treated as related to regular SS Grade-I and not connected with the Respondent/Workman. This Court finds force in the argument advanced by the learned Counsel for the Petitioner.

29. After examining the issue in detail, this Court is of the considered view that the finding recorded by the learned Labour Court is perverse and illegal and not sustainable in law. The pending reference was not connected to the Respondent/Workman in any manner and hence, the application filed by the Respondent under Section 33A of the I.D. Act is misconceived. If the Respondent/Workman is aggrieved by his termination, he should have approached the learned Labour Court invoking Section 10 of the I.D. Act. By invoking the procedure under Section 33A of the I.D. Act, the Respondent/Workman is attempting to overreach the process of the Court.

30. In view of the aforesaid finding to the effect that the Application filed by the Respondent/workman was not maintainable under Section 33A of the I.D. Act, this Court deems it appropriate not to delve into the validity of the termination order at this stage.

31. In view of the detailed discussion herein above, the Impugned Award is hereby set aside. If the Respondent/Workman is
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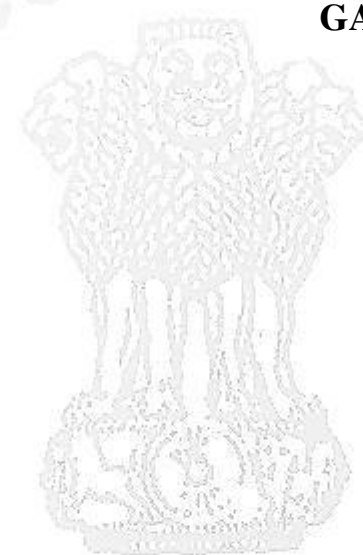
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aggrieved by his termination, he is at liberty to approach the learned Labour Court by invoking Section 10 of the I.D. Act. In that case, the Labour Court will decide the reference without being influenced by the above observations made by this Court or by the learned Labour Court in the Impugned Award.

32. The present Writ Petition is allowed. No order as to costs.

GAURANG KANTH, J.

FEBRUARY 16, 2023



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