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

Date of Decision :- 18.08.2023

+ **W.P.(C) 10622/2023 & CM APPL. 41218/2023**

MS D I C INDIA LTD

..... Petitioner

Through: Mr. Siddharth Dias, Adv.

versus

MR UDAY CHAUDHARY & ANR.

..... Respondent

Through: Ms. Meghna De and Mr. L. Gangmei,
Advts for R-1.

Mr. Siddharth Sukhla, Mr. Dhurv
Kalia and Mr. Satender Kumar, Adv.
for R-2.

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J (Oral)

- 1.0. Vide this petition, the petitioner is assailing the order dated 06.07.2023 whereby the petitioner's application challenging the proceedings u/s 33A Industrial Disputes Act, 1947 (**ID Act**) was dismissed by the Ld. Presiding Officer, Industrial Tribunal-01, Rouse Avenue Court, New Delhi in LIR no. 802/2021.
- 2.0. Relevant portion of the impugned order dated 06.07.2023 dismissing the petitioner's application pleading that the proceedings under Section 33-A ID Act are not maintainable, reads as under :-



“ An application filed by the management is pending whereby the management has stated that proceedings u/s 33 A ID Act are not maintainable as the workman was terminated on 05.11.2016 and main reference was filed on 03.03.2017. The AR of the workman has straightway argued the application stating that demand was raised on 10.03.2016 and matter was pending with conciliation officer in July 2016 much before the date when the workman was terminated. The dates are not disputed. Section 33 A of the ID Act does not say that matter should be pending before labour court or tribunal only, but it includes the words Conciliation Officer as well. In these circumstances, the arguments of the ld. AR for the management does not hold water and same are discarded. Accordingly, petitioner is maintainable and application of the management is dismissed.”

3.0. It would be pertinent to refer here to the relevant provisions. Section 33 (1) of ID Act 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.



3.1. Section 33-A of ID Act reads :

S. 33-A - 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.]”

3.2. From the plain reading of Section 33 ID Act, it is clear that conditions of service of a workman can not be changed during the pendency of proceedings before Conciliation Officer or Board or a Labour Court or a Tribunal, without seeking permission in writing of the concerned authority, before which the proceeding is pending. Further, in case any employer in contravention of S. 33 (1), changes the conditions of service during the pendency of such proceedings, an employee may make a complaint under





Section 33A ID Act in this respect which shall be adjudicated by the authority concerned.

4.0. In the instant case, it is not disputed that on 14.07.2016, a dispute was raised by the respondent by filing a claim before the Conciliation Officer. Admittedly, the services of the respondent-workman were terminated on 05.11.2016 during the pendency of the proceedings before the Conciliation Officer, without seeking permission of the Conciliation Officer. Later, the dispute of regularization was referred for adjudication to the Industrial Tribunal and the respondent filed a complaint under Section 33-A of ID Act before the tribunal.

5.0. Ld. counsel for the petitioner argues that the respondent could not have made the complaint under Section 33-A before the Ld. Tribunal as his services were terminated during the pendency of conciliation proceedings before the Conciliation Officer. He could have raised the said complaint only before the Conciliation Officer. Ld. counsel submitted that the petitioner is even challenging employer-employee relationship.

6.0. Per contra, Ld. counsel for the respondent submits that the petitioner could not have changed the condition of service/terminated the respondent's services during pendency of conciliation proceedings. Same was rightly challenged by the respondent u/S 33A ; and the petitioner's application seeking dismissal of the respondent's complaint u/S. 33A was rightly



dismissed. The petitioner cannot be allowed to earn premium on his own wrong doing, by way of present petition, which is nothing but a ploy to further delay the proceedings. She also submits that the Hon'ble Supreme Court in '*DP Maheshwari vs. Delhi Administration (1983) 4 SCC 293*' has deprecated the practice of moving such applications. This petition, therefore, deserves to be dismissed at the outset with exemplary cost as the petitioner has even concealed the material facts.

6.1. Ld. counsel for the respondent also submits that the respondent not being well educated was under the impression that his grievance of termination would also be dealt with, in the dispute of regularization. Later on, on coming to know that a complaint can also be filed regarding his termination pending the dispute, he moved the complaint u/S 33-A ID Act accordingly. The said complaint was replied to by the petitioner vide reply dated 26.02.2022 and the issues in the matter were framed on 05.03.2022. The petitioner even filed an application for framing of an additional issue of territorial jurisdiction, which was allowed and additional issue was framed. Thereafter, the respondent even filed his affidavit in evidence on 04.08.2022. However thereafter, on 20.09.2022, the petitioner herein filed an application seeking dismissal of the respondents' complaint under Section 33-A ID Act, which came to be rightly dismissed vide impugned order as referred to above.

6.2. Ld. counsel for the respondent argues that the petitioner has suppressed the material facts in the present petition that on the basis of the



contentions of the parties, necessary issues with respect to employer-employee relationship and jurisdiction have already been framed.

7.0. As noted above, in terms of Section 33 (1), without permission in writing of the authority, the petitioner could not have changed the respondent's conditions of services/terminated his service during pendency of the proceedings before the Conciliation Officer. There is no bar to filing of complaint under Section 33-A ID Act before the Labour Court or Tribunal, if in contravention of Section 33 (1) ID Act, the conditions of service were changed to the prejudice of the respondent/workman, during pendency of conciliation proceedings, as has been done by the petitioner in the present case. Thus, there is hardly any merit in the argument of the Ld. Counsel for the petitioner to that effect.

8.0 Further, with respect to the argument of Ld. counsel for the petitioner that they have even challenged the employer-employee relationship ; and the jurisdiction of Industrial Tribunal, suffice it to state that with respect to both these contentions, issues have already been framed by the Ld. Industrial Tribunal as under –

“(i) Whether there is relationship of workman-management exists between the parties? OPW

Additional issue framed vide order dated 04.08.2022

Whether this Tribunal has no territorial jurisdiction to entertain the application filed by the claimant u/s 33A of Industrial Disputes Act, 1947 ? OPM.



8.1. Thus, there is merit in the respondent's argument that the petitioner could not have raised the same contentions in the present petition.

9.0. In view of the above, this court finds no merit in the present petition. Rather, considering the above facts and circumstances in entirety, it is clear that this petition is nothing but an abuse of process of law. The petition is therefore, dismissed with cost of Rs. 10,000/- to be paid to the respondent/workman.

10.0. Pending application is closed.

POONAM A. BAMBA, J

AUGUST 18, 2023/csc

Click here to check corrigendum, if any