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

+ **Date of Decision: 20.10.2023**

% **LPA 704/2023 and C.M. Nos.53241-53242/2023**

MS DIC INDIA LTD Appellant

Through: Mr. Siddharth Dias, Advocate.

versus

MR UDAY CHAUDHARY & ANR. Respondents

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, C.J. (ORAL)

1. The present Letters Patent Appeal (LPA) has been filed by the appellant challenging the judgment dated 18.08.2023 passed by the learned Single Judge in W.P.(C.) No. 10622/2023 titled *MS DIC India Ltd Vs. Mr Uday Chaudhary & Anr.*

2. The facts of the case reveal that the respondent No.1 employee was working under the appellant/ M/s D.I.C. India Ltd. – which is a company duly incorporated under the Companies Act, 1956. On 14.07.2016, the respondent No.1 employee raised an industrial dispute under the provisions of the Industrial Disputes Act, 1947 (the Act) before the Conciliation Officer.



3. During the pendency of the conciliation proceedings, the services of the respondent No.1 workman were put to an end on 05.11.2016 without obtaining any permission from the Conciliation Officer, and in those circumstances, the workman preferred a complaint under Section 33A of the Act before the Industrial Tribunal. The appellant/ employer preferred an application before the Presiding Officer, Industrial Tribunal-01, Rouse Avenue, challenging the proceedings initiated by the workman under Section 33A of the Act and the said application preferred by the appellant/ employer was dismissed by an order dated 06.07.2023.

4. Being aggrieved by the order dated 06.07.2023, the appellant/ writ Petitioner preferred a writ petition being W.P.(C.) No. 10622/2023 before this Court and the learned Single Judge has dismissed the said writ petition by judgment dated 18.08.2023.

5. Learned counsel for the petitioner has vehemently argued before this Court that the application preferred by the workman under Section 33A of the Act should have been preferred before the Conciliation Officer before whom the conciliation proceedings were pending, and therefore, the order passed by the Industrial Tribunal is bad in law.

6. Learned counsel for the petitioner has placed heavy reliance upon the decision delivered by the learned Single Judge of the Punjab & Haryana High Court in the case of **Ram Sanjeevan Vs. Presiding Officer, Labour Court, U.T. Chandigarh & Anr.**, 2009 LAB. I.C. 2023. His contention is that the learned Single Judge has erred in law & facts in dismissing the writ petition.



7. This Court has carefully gone through the judgment dated 18.08.2023 passed by the learned Single Judge and the operative portion of the said judgment – as contained in paragraphs 6 to 9 thereof, reads as under:

“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.”

8. This Court has carefully gone through the impugned judgment passed by the learned Single Judge and the undisputed facts of the case reveal that the workman took shelter under the provisions of the Act by approaching the Conciliation Officer on 14.07.2016. The services of the workman were terminated on 05.11.2016, meaning thereby, during the pendency of the conciliation proceedings in respect of some other dispute raised by the workman. The workman was later on terminated on 05.11.2016, and thereafter, the workman approached the Industrial Tribunal under Section 33A of the Act.

9. The brief facts which are necessary for deciding the present LPA are stated as under:

a) That the respondent joined into the employment of the appellant w.e.f. 08.03.1999 as a Driver. After more than 18 years of continuous services with the appellant, the respondent raised an industrial dispute regarding regularization of his services by filing a claim before the learned Conciliation Officer on 14.07.2016.

b) On 05.11.2016, the respondent was informed that there is no further need of his services and hence he need not come on duty from the next day i.e. 06.11.2016. Thus, the appellant terminated the services of the respondent during the pendency of the aforesaid dispute without any prior permission in



gross violation of Section 33(1) of the Act.

c) That the respondent not being well educated and having no legal knowledge, was under the impression that his grievance regarding termination will also be dealt with in the dispute of regularization. It was only later that he came to know that a complaint can also be filed before a competent Court of law regarding impugned termination though his dispute regarding regularization is already pending.

d) That the Govt. N.C.T of Delhi vide its Order dated 03.03.2017 referred the dispute of regularization for adjudication to the Industrial Tribunal as per the following terms of reference:-

"Whether the workman Sh. Uday Chaudhary S/o Sh. S. Dyal Chaudhary aged-46 years is entitled to be regularized in service from the initial date of his joining i.e. 08/03/1999 and if so, to what relief is he entitled and what directions are necessary in this respect?"

e) The abovementioned reference was numbered LIR 686/17 (new POIT 47/2023). During the pendency of the said dispute before the learned Tribunal, when the respondent was advised to file a separate complaint against the termination before the learned Industrial Tribunal, the said complaint was filed under Section 33A of the Act, which was numbered ID No. 802/2021. That the Appellant filed reply to the said Complaint. The learned Tribunal on the basis of the pleadings of the parties in ID No. 802/2021 framed the following issues (appellant has concealed this material fact) that:

"i) Whether there is relationship of workman-management



exists between the parties? OPW

(i) Whether the present dispute is barred by delay and latches? OPM

(iii) Whether there is appropriate and proper espousal in favour of the workman? OPW

(iv) As per terms of reference.”

It is pertinent to mention that the parties did not press for any other issue.

f) That to delay the proceedings, the appellant filed an application for framing an additional issue of territorial jurisdiction, and the respondent in the interest of early disposal of the application did not file any reply but opposed the said application on the ground that the appellant did not press for the issue at the appropriate stage. The learned Tribunal vide order dated 04.08.2022 allowed the application and added the following issue –

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

g) Thereafter, the appellant filed another application with the sole purpose of delaying the proceedings. By way of the said application, appellant sought dismissal of the Complaint under Section 33A of the Act. The respondent with the intention of speedy disposal of the case sought to argue the application and not file a reply to the same, and the learned Tribunal has dismissed the Application vide order dated 06.07.2023 which is impugned in the writ petition.

h) The facts further reveal that Respondent has already led his evidence.



Appellant failed to produce their witness, hence their evidence was closed and now the matter is listed for final arguments on 02.11.2023.

10. The aforesaid facts make it very clear that the appellant organization has suppressed material facts that issues were framed by the learned Tribunal in I.D. No.802/2021 regarding employer-employee relationship, delay, territorial jurisdiction, etc. It has also not been brought to the notice of this Court by the appellant that the appellant had filed an application for framing of additional issue in respect of territorial jurisdiction on 04.08.2022 which was allowed vide order dated 04.08.2022. Thereafter, an application was preferred regarding maintainability on 20.09.2022. Therefore, the conduct of the appellant establishes that the appellant is delaying the matter before the Industrial Tribunal on one pretext or the other. The workman – with no source of income, is fighting for his rights guaranteed under the Act and the appellant wants him to be thrown-out of the Court on account of technicalities.

11. The relevant statutory provisions governing the field as contained under Section 33(1) and Section 33A of the Act are reproduced 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.

x x x x x x x x x

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.”

12. A reading of the aforesaid statutory provisions makes it very clear that the service conditions of the workman cannot be changed during the pendency of the proceedings before the Conciliation Officer, Board or



Labour Court or Tribunal without seeking permission in writing of the concerned authority before whom the proceedings were pending.

13. The aforesaid statutory provisions also entitle the workman to file a complaint under Section 33A of the Act, in case the employer acts in contravention of the statutory provisions as contained under Section 33(1) of the Act.

14. Keeping in view the statutory provisions governing the field as the services of the workman in the present case were put to an end by an order dated 05.11.2016, the workman was certainly entitled to prefer a complaint under Section 33A of the Act and the application was rightly preferred by the workman before the Industrial Tribunal. The complaint preferred under Section 33(1) of the Act is certainly maintainable. (see The ***Bhavnagar Municipality Vs. Alibhai Karimbhai & Others***, (1977) 2 SCC 350 and ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma & Others***, (2002) 2 SCC 244, and ***Tops Security Ltd. Vs. Subhash Chander Jha***, ILR (2012) VI DELHI 616).

15. The employer did prefer an application for dismissal of the proceedings under Section 33A of the Act and the said application was turned down on 06.07.2023. Not only this, issues were framed in the matter and the proceedings in respect of the alleged illegal termination were pending before the Industrial Tribunal.

16. The facts of the case further reveal that on some pretext or the other the appellant/ employer delayed the proceedings of a poor workman who was not well-educated and the learned Single Judge – by placing reliance



upon a judgment delivered by the Hon'ble Supreme Court in the case of ***D.P. Maheshwari Vs. Delhi Administration***, (1983) 4 SCC 293, has upheld the order passed by the Labour Court.

17. In the considered opinion of this Court, keeping in view the peculiar facts & circumstances of the case, once the workman has been terminated, the issue of termination has to be looked into by the Industrial Tribunal, especially in light of the fact that as to whether the employer has violated the statutory provisions as contained under Section 33(1) of the Act and the issue has to be brought to a logical conclusion. Forcing the workman to go from one forum to another is not going to serve any purpose rather it will defeat the statutory provisions. This Court really fails to understand as to why the employer is not contesting the matter on merits – which relates to termination of workman, and dragging the workman from Court to Court by raising technical grounds.

18. This Court has certainly looked into the judgment delivered by the Punjab & Haryana High Court in ***Ram Sanjeevan*** (supra). It is true that the Punjab & Haryana High Court has held that the application under Section 33A of the Act is maintainable before an authority where the proceedings are pending, and when the employer contravenes the provisions of Section 33 of the Act. It is true that the learned Single Judge of the Punjab & Haryana High Court has allowed the writ petition, however, the judgment of the Punjab & Haryana High Court is having persuasive value. No statutory provision of law, or any judgment of the Hon'ble Supreme Court, or of a Coordinate Bench of this Court has been brought to notice of this Court, deciding the issue involved in the present case. The statutory provision



governing the field entitles the workman to approach the Tribunal also, in case the provisions of Section 33(1) of the Act are violated by the employer, challenging the service conditions during the pendency of proceedings before the Conciliation Officer.

19. This Court does not find any reason to interfere with the judgment passed by the learned Single Judge. The Industrial Tribunal is directed to decide the matter as expeditiously as possible and preferably within six months from the date of receipt of certified copy of this order.

20. With the aforesaid observations, the LPA stands dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

OCTOBER 20, 2023

B.S. Rohella