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W.A.Nos.2417 of 2011 & 1193 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	04.09.2024
<i>Pronounced on</i>	01.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.Nos.2417 of 2011 & 1193 of 2012
and M.P.No.1 of 2012

W.A.No.2417 of 2011

The Management of GEM Granites,
 146, Injambakkam,
 Chennai – 600 041.
 Rep. by its General Manager

...Appellant

Vs.

1.The Presiding Officer,
 Industrial Tribunal,
 City Civil Court Buildings,
 Chennai – 600 104.

2.V.K.Prakasam

3.N.Sankar

4.P.Baskaran

5.S.Jacob

6.T.V.Shanmugham

7.M.Selvaraj



W.A.Nos.2417 of 2011 & 1193 of 2012

8.K.Rajendran

9.R.Varadhan

(Rep. by the Gem Granites and
Group Workers Union (Regd)
7xMC Lean Street,
Chennai – 1.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, to
set aside the order dated 09.11.2011 made in W.P.No.17664 of 2001.

For Appellant : Mr.A.L.Somayaji
senior counsel
for Mr.R.Dharanichander

For R1 : Court

For R2 to R9 : Mr.K.M.Ramesh
senior counsel
for Mr.V.Subramani and Mr.S.Apunu

W.A.No.1193 of 2012

The Workmen,
Rep. by the General Secretary,
Bharathiya Employees Mazdoor Sangh,
(Gem Granites Unit)
5/76, Dr.Nanjunda Rao Salai,
Injambakkam,
Chennai – 600 041.

...Appellant

Vs.

1.The Presiding Officer,
Industrial Tribunal,
City Civil Court Buildings,
Chennai – 600 104.



W.A.Nos.2417 of 2011 & 1193 of 2012

2.The Management of GEM Granites,
146, Injambakkam,
Chennai – 600 041.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the order of the learned Judge made in W.P.No.16139 of 2000 dated 09.11.2011.

For Appellant	: Mr.K.M.Ramesh senior counsel for Mr.V.Subramani and Mr.S.Apunu
For R1	: Court
For R2	: Mr.A.L.Somayaji senior counsel for Mr.R.Dharanichander

COMMON JUDGMENT

M.S.RAMESH, J.

Since the issue involved in both these Writ Appeals are inter-connected, they are heard together and disposed of through this common judgment.

2. The brief and relevant facts involved in the two appeals are as follows:-

2.1. On 02.09.1997, when eight workers of M/s.Gem Granites



W.A.Nos.2417 of 2011 & 1193 of 2012

(hereinafter referred to as 'the Management') were transferred to a branch factory in Karnataka from Chennai, they had raised Industrial Disputes before the Conciliation Officers, which ultimately ended in a failure and through G.O.Ms.No.472, Labour and Employment Department, dated 02.07.1998, the State Government had referred the dispute for adjudication by the Industrial Tribunal at Chennai (hereinafter referred to as 'the Tribunal').

2.2. The order of reference made to the Tribunal was “whether the action of the Management in transferring eight workers from Chennai to the branch factory at Karnataka was justified and if not, to what relief they are entitled to”. The said reference was taken by the Tribunal on file as Industrial Dispute in I.D.No.100 of 1998.

2.3. Thereafter, when the Management intended to dismiss these eight workmen, who had disregarded the transfer order, they had filed petitions under Section 33(1)(b) of Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') on 06.11.1998, seeking permission to dismiss the eight workmen. These petitions were taken on file as A.P.Nos.61 of 1998 to 68 of 1998.

2.4. On 04.04.2000, the Management had, however, withdrawn all the eight approval petitions, in view of the then prevailing law set forth by



W.A.Nos.2417 of 2011 & 1193 of 2012

a Three Judge Bench of the Hon'ble Supreme Court in the case of

M/s.Punjab Beverages Pvt.Ltd., Chandigarh Vs. Suresh Chand and

Another reported in ***1978 (2) SCC 144*** (hereinafter referred to as '*Punjab*

Beverages case'), holding that non-approval of the order of dismissal or

failure to make application under Section 33(2)(b) would not render the

order of dismissal inoperative and failure to apply for approval under

Section 33(2)(b) would only render the employer liable to punishment

under Section 31 of the Act and the remedy of the employee is either by

way of a complaint under Section 33-A or by way of a reference under

Section 10(1)(d) of the Act.

2.5. After such withdrawal, the Management had dismissed these workmen, through orders dated 28.11.1998. Challenging the order of dismissal, the Trade Union representing the eight workmen filed Complaint No.1 of 2000 on 08.04.2000 before the Tribunal under Section 33-A of the Act.

2.6. On 26.05.2000, an award came to be passed in I.D.No.100 of 1998, holding that the transfer orders were justified. Challenging this award, the Union had preferred W.P.No.16139 of 2000 before a learned Single Judge of this Court.

2.7. Thereafter, the Tribunal had passed another award in



W.A.Nos.2417 of 2011 & 1193 of 2012

Complaint No.1 of 2000 dated 26.06.2001, setting aside the order of dismissal, and by directing for reinstatement of these eight workmen with backwages, by holding that the domestic inquiry conducted by the Management was not fair and proper.

2.8. This award dated 26.06.2001 was put under challenge in a Writ Petition in W.P.No.17664 of 2001. On 09.11.2011, the learned Single Judge of this Court had placed reliance on the decision of the Five Judge Constitutional Bench of the Hon'ble Supreme Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Vs. Ram Gopal Sharma and Others*** (hereinafter referred to as '*Jaipur Zila case*') reported in **2002 (2) SCC 244** and held that since the workmen were dismissed by the Management without seeking for express permission by the Tribunal, before which the Industrial Dispute relating to the dispute regarding transfer was still pending, their orders of dismissal cannot be sustained and accordingly dismissed W.P.No.17664 of 2001. Likewise, the learned Single Judge had also dismissed W.P.No.16139 of 2000 on 09.11.2011, holding that, in both the Awards, as well as the subsequent complaint, the Tribunal had recorded that there was no *mala fide* and the Management had the power to transfer the workmen from one station to another. Challenging both the orders of dismissal in the Writ Petitions, the



W.A.Nos.2417 of 2011 & 1193 of 2012

Management, as well as the aggrieved workmen, have preferred these intra-Court Writ Appeals.

3. Mr.A.L.Somayaji, learned senior counsel appearing for the Management submitted that prior to ***Jaipur Zila case***, the legal position with regard to the scope of Section 33 of the Act were delineated in ***Punjab Beverages case***, by holding that the remedy of the employee in cases where the Management fails to make an application for approval of order of discharge or dismissal or withdrawal of such application after making it, is either under Section 33-A or Section 10(1)(d) of the Act and therefore, they were constrained to withdraw the approval petitions preferred by them. In this background, he would submit that, though ***Punjab Beverages case*** was subsequently overruled by the Constitutional Bench of the Hon'ble Supreme Court in ***Jaipur Zila case***, the subsequent decisions in ***Rajasthan State Road Transport Corporation and Another Vs. Satya Prakash*** reported in (2013) 9 SCC 232 (two Judges Bench) (hereinafter referred to as '***Rajasthan SRTC case***'); ***The Management of Karur Vysya Bank Vs. S.Balakrishnan*** reported in (2016) 12 SCC 221 (two Judges Bench) and ***Managing Director, North-East Karnataka Road Transport Corporation Vs. Shivasharanappa*** reported in (2017)



W.A.Nos.2417 of 2011 & 1193 of 2012

16 SCC 540 (three Judges Bench), have considered and interpreted

Jaipur Zila case and hence submitted that while **Jaipur Zila case** deals

with scope of Section 33 and the consequences of its contravention,

Rajasthan SRTC case deals with scope of Section 33-A, *vis-a-vis*

contravention of Section 33 and therefore submitted that, as held in

Rajasthan SRTC case, when a complaint is made under Section 33-A,

the Tribunal shall adjudicate upon the complaint, as if it were dispute

referred to it and submit its award to the appropriate Government. He

would further submit that the withdrawal of the application under Section

33(1)(b) of the Act would be immaterial, in view of the law laid down in

Rajasthan SRTC case. With regard to the binding nature of a decision of

the Smaller Bench of the Hon'ble Supreme Court, *vis-a-vis* a Larger

Bench, the learned senior counsel placed reliance on the decisions of the

High Court of Gujarat in the cases of **Nizamuddin Suleman Vs. The**

New Shorrock and Another reported in **1978 SCC OnLine Guj 115**;

Commissioner of Gift Tax Vs. Arunbhai Hargovandas Patel reported in

2001 SCC OnLine Guj 413 and a decision of the High Court of Calcutta

in the case of **Commissioner of Income Tax Vs. Oberoi Hotels Pvt.**

Ltd., reported in **2011 SCC OnLine Cal 718** and submitted that even if

the views expressed by the Larger Bench of the Hon'ble Supreme Court



W.A.Nos.2417 of 2011 & 1193 of 2012

have been referred to and explained by a Smaller Bench in a subsequent decision, the decision by the Smaller Bench of the Hon'ble Supreme Court, would also be binding on the High Courts before whom the earlier decision of the Larger Bench and the subsequent explanation of the same judgment by the Smaller Bench are cited.

4. Mr.K.M.Ramesh, learned senior counsel appearing on behalf of the workmen submitted that the decision in ***Jaipur Zila case*** was rendered by a Constitutional Bench of Five Hon'ble Judges laying down the object and procedure to be adopted under Section 33 of the Act, as per which the failure to make an application for approval or withdrawal of an application for permission would render the order of discharge or dismissal void and inoperative. With regard to the subsequent decisions of the Smaller Bench of the Hon'ble Supreme Court in ***Rajasthan SRTC case***, ***Karur Vysya Bank's case (supra)*** and ***North-East Karnataka Road Transport Corporation's case (supra)*** are concerned, the learned senior counsel submitted that all these three judgments will have no binding effect on the High Court and the decision of the Larger Constitutional Bench alone would prevail, as clarified by the Hon'ble Supreme Court in the case of ***Sundeep Kumar Bafna Vs. State of***



W.A.Nos.2417 of 2011 & 1193 of 2012

***Maharashtra and Another* reported in 2014 (16) SCC 623.**

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5. We have given our careful consideration to the submissions made by the respective senior counsels.

6. The decision in ***Jaipur Zila case*** was rendered by the Hon'ble Five Judges Constitutional Bench on 17.01.2002, holding that the failure to make an application under Section 33(2)(b) of the Act, seeking for approval of an order of discharge or dismissal or withdrawal of such application after making it, would render the order of discharge or dismissal void and inoperative. While holding so, the contrary view of the earlier decision in ***Punjab Beverages case*** was overruled.

7. The endeavour of Mr.A.L.Somayaji, learned senior counsel appearing for the Management is that in view of ***Rajasthan SRTC case*** and the subsequent two other decisions of the Hon'ble Supreme Court, referring and interpreting ***Jaipur Zila case***, the orders of the learned Single Judge may require interference. He also submitted that he did not have the benefit of these subsequent judgments of the Hon'ble Supreme Court, when the orders of the learned Single Judge in the two Writ



W.A.Nos.2417 of 2011 & 1193 of 2012

Petitions were made on 09.11.2011.

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8. The scope, authority and procedure regulating the proceedings under Section 33 of the Act has been well settled by the Constitutional Bench of the Hon'ble Supreme Court in ***Jaipur Zila case***, by holding that the failure to make an application or withdrawal of an application under Section 33 would *ipso facto* be fatal to the order of discharge or dismissal. The relevant portion of the judgment reads as follows:-

“13. The proviso to Section 33(2)(b), as can be seen from its very 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 another way, the said conditions being mandatory, are to be satisfied if



W.A.Nos.2417 of 2011 & 1193 of 2012

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 is 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 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 the order of discharge or



W.A.Nos.2417 of 2011 & 1193 of 2012

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. 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 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A 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 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of the 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 33-A 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.

15. 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 33-A, 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 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 33-A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have



recourse to one or more proceedings by making a complaint under Section 33-A 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.

16. 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 33-A 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 33-A. There is nothing in Sections 31, 33 and 33-A to suggest otherwise even reading them together in the context. These sections are intended to serve different purposes.



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W.A.Nos.2417 of 2011 & 1193 of 2012

17. As already noticed above, the Constitution Bench of this Court in *P.H. Kalyani v. Air France, Calcutta* [AIR 1963 SC 1756 : (1964) 2 SCR 104] has referred to *Strawboard Mfg. Co. v. Govind* [1962 Supp (3) SCR 618 : AIR 1962 SC 1500] and approved the view taken in the said decision as regards the requirements of the proviso to Section 33(2)(b). Unfortunately in *Punjab Beverages (P) Ltd. v. Suresh Chand* [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : (1978) 3 SCR 370] the earlier two cases of *Strawboard* [1962 Supp (3) SCR 618 : AIR 1962 SC 1500] and *Tata Iron & Steel Co.* [AIR 1966 SC 380 : (1965) 3 SCR 411] were not noticed touching the question. It is true that in *S. Ganapathy v. Air India* [(1993) 3 SCC 429 : 1993 SCC (L&S) 796 : JT (1993) 4 SC 10] there is no reference to *Punjab Beverages* [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : (1978) 3 SCR 370] . But the view taken in two earlier decisions of *Strawboard* [1962 Supp (3) SCR 618 : AIR 1962 SC 1500] and *Tata Iron & Steel Co.* [AIR 1966 SC 380 : (1965) 3 SCR 411] is followed on the question and rightly so in our opinion.

18. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of *Strawboard* [1962 Supp (3) SCR 618



W.A.Nos.2417 of 2011 & 1193 of 2012

: AIR 1962 SC 1500] and Tata Iron & Steel Co. [AIR 1966 SC 380 : (1965) 3 SCR 411] and further state that the view expressed in Punjab Beverages [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : (1978) 3 SCR 370] on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly.”

9. The aforesaid extract is self explanatory. Thus, as held by the Constitutional Bench of the Hon'ble Supreme Court, the procedure to be adopted by the Management, as provided under the Proviso to Section 33(2)(b) of the Act, while dismissing or discharging a workman, is mandatory and therefore, failure to make an application either for permission to discharge or dismiss a workman under Section 33(1) or failure to make an application for approval under Section 33(2)(b), would render the order of dismissal or discharge, *ab initio* void and inoperative. Thus, we are unable to ratify or endorse the first ground raised by the learned senior counsel for the appellant/Management in this regard.

10. This leads us to the second limb of his arguments as to the binding nature of the decisions of a Smaller Bench of the Hon'ble



W.A.Nos.2417 of 2011 & 1193 of 2012

Supreme Court, *vis-a-vis* the Larger Bench, on the High Courts of the Country. It is the submission of the learned senior counsel for the Management that even though the subsequent decisions are rendered by a Smaller Bench, where explanations and interpretations are rendered, the High Court is bound to follow the subsequent decisions by the Smaller Bench of the Hon'ble Supreme Court and cannot give a different interpretation than the one made in the subsequent decision. Apparently, the learned senior counsel is referring to the mandate under Article 141 of the Constitution of India, which enshrines that the law declared by the Hon'ble Supreme Court is binding on all Courts within the territory of India. In support of his contention, he placed reliance on the decisions of the Full Bench of the High Court of Gujarat in *Nizamuddin Suleman's case (supra)*; a Division Bench of the High Court of Gujarat in *Arunbhai Hargovandas Patel's case (supra)* and a Division Bench of the High Court of Calcutta in *Oberoi Hotels' case (supra)*, on the presidential value of Judge-made laws.

11. The learned senior counsel appearing for the workmen had relied upon the decision in *Sundeep Kumar Bafna's case (supra)*, which answers the ground raised by the Management, wherein it was held *inter*



W.A.Nos.2417 of 2011 & 1193 of 2012

alia that when decisions of the Larger Benches and contrary views of the Smaller Benches of the Hon'ble Supreme Court are cited before the High Courts, the only option available to the High Courts is to apply the earliest view. The relevant portion of the judgment reads as follows:

“19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest.



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W.A.Nos.2417 of 2011 & 1193 of 2012

view as the succeeding ones would fall in the category of per incuriam.”

(Emphasis supplied by us)

12. The aforesaid extract squarely covers the predicament when decisions of the Larger Bench of the Hon'ble Supreme Court, as well as the Smaller Benches with interpretations and further explanations on the *ratio decedendi* are produced before the High Courts, or when two different views on a *ratio decedendi* by the Hon'ble Supreme Court are relied upon. In line with the decision in ***Sundeep Kumar Bafna's case (supra)***, the High Court would be obligated to follow the earliest view of the Hon'ble Supreme Court.

13. For the proposition on binding nature under the law of precedence, the learned senior counsel appearing for the management had placed reliance on the decisions of the High Courts of Gujarat and Calcutta in the cases of ***Nizamuddin Suleman (supra)***; ***Arunbhai Hargovandas Patel (supra)*** and ***Oberoi Hotels (supra)***. We are not in a position to adhere to the dictum laid down in those decisions, in view of the categorical pronouncement on the procedure to be adopted in such



W.A.Nos.2417 of 2011 & 1193 of 2012

situations in the case of **Sundeeep Kumar Bafna (supra)**, which decision is also later in time, after the aforesaid three decisions of the High Courts.

14. As already observed by us, the law has been well established in **Jaipur Zila case** with regard to the procedure to be adopted by the Management, while discharging or dismissing a workman, wherein it has been *inter alia* held that it is for the Management to mandatorily comply with the requirements of the Proviso to Section 33 of the Act and therefore, the contrary claim of the Management in this regard, stands rejected.

15. For all the foregoing reasons, the orders of the learned Single Judge in both the Writ Petitions in W.P.Nos.16139 of 2000 and 17664 of 2001 does not require interference. Accordingly, both the Writ Appeals stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]
01.10.2024

Index:Yes
Neutral Citation:Yes
Speaking order
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W.A.Nos.2417 of 2011 & 1193 of 2012

M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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To

The Presiding Officer,
Industrial Tribunal,
Civil Court Buildings,
Chennai – 600 104.

Pre-delivery judgment made in
W.A.Nos.2417 of 2011 & 1193 of 2012

01.10.2024