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W.A. No.330 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2024

CORAM:

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

W.A. No.330 of 2024 & C.M.P. No.2046 of 2024

The Managing Director
Sunbeam Generator (P) Ltd.
Puducherry

Appellant

v

1 The Presiding Officer
Industrial Tribunal-cum-Labour Court
Puducherry

2 Sun Beam Generators Thozhilalargal Sangam
represented by its Secretary
E. Jayachandran
Puducherry

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 12.10.2023 passed in W.P. No.23347 of 2017.

For petitioner Mr. V. Karthic, Sr. Counsel
for Mr. John Zachariah

R1 Labour Court

For R2 Mr. P.R. Thiruneelakandan



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W.A. No.330 of 2023



JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

This writ appeal impugns the order dated 12.10.2023 passed by a Single Bench in W.P. No.23347 of 2017.

2 For the sake of clarity, the appellant, the first respondent and the second respondent will be adverted to as the Company, Labour Court and union, respectively.

3 The facts which led to the filing of this writ appeal could be succinctly stated thus:

3.1 On the ground that some of the members of the union were constantly involved in anti-establishment activities and were disrupting the smooth functioning of the Company, they were dismissed from service, aggrieved by which, on a representation made by the union, the Labour Officer submitted a failure report, which was referred by the Government and the matter was subsequently taken on file by the Labour Court as I.D. (L) No.21 of 2014, in which, an award dated 30.05.2017 was passed directing the Company to reinstate the workmen with 50% backwages.



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3.2 Challenging the said award, the Company preferred a writ petition being W.P. No.23347 of 2017, in which, the two major issues which arose for the consideration of the Single Bench were:

(i) whether domestic enquiry was conducted by the Company in a fair and proper manner; and

(ii) whether the Company complied with the requirement of getting necessary approval from the appropriate authority, as required under Section 33(2)(b) of the Industrial Disputes Act, 1947 (*for brevity "The Act"*)

3.3 The Single Bench, on hearing either side and gleaning through the records, answered both the points in the negative, thereby, confirming the award of the Labour Court and dismissing the writ petition.

3.4 Questioning the correctness of the award of the Labour Court as confirmed by the Single Bench, the Company has preferred this writ appeal.

4 Heard Mr. V. Karthic, learned Senior Counsel, representing Mr. John Zachariah, learned counsel on record for the Company and Mr. P. R. Thiruneelakandan, learned counsel for the union.



5 At the threshold, it would be useful to extract Sections 2-A, 10, 33, and 33-A of the Act and Rules 22 and 23 of the Tamil Nadu Industrial Disputes Rules, 1958.

“2-A Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application, the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.”

10. Reference of disputes to Boards, Courts or Tribunals.—(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,—

- (a) refer the dispute to a Board for promoting a settlement thereof; or
- (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:



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Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government.

(1A) Where the Central Government is of opinion that any industrial dispute exists or is apprehended and the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute and that the dispute should be adjudicated by a National Tribunal, then, the Central Government may, whether or not it is the appropriate Government in relation to that dispute, at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a National Tribunal for adjudication.

(2) Where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court, 6 Labour Court, Tribunal or National Tribunal, the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly.

(2A) An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.



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(3) Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

(4) Where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.

(5) Where a dispute concerning any establishment or establishments has been, or is to be, referred to a Labour Court, Tribunal or National Tribunal under this section and the appropriate Government is of opinion, whether on an application made to it in this behalf or otherwise, that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may, at the time of making the reference or at any time thereafter but before the submission of the award, include in that reference such establishment, group or class of establishments, whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments.

(6) Where any reference has been made under sub-section (1A) to a National Tribunal, then notwithstanding anything contained in this Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal, and accordingly,—

(a) if the matter under adjudication before the National Tribunal is pending a proceeding before a Labour Court or Tribunal, the proceeding before the Labour Court or the Tribunal, as the case may be, in so far as it relates to such matter, shall be deemed to have been quashed on such reference to the National Tribunal; and

(b) it shall not be lawful for the appropriate Government to refer the matter under adjudication before the National Tribunal to any Labour Court or Tribunal for adjudication during the pendency of the proceeding in relation to such matter before the National Tribunal.

Explanation.—In this sub-section, “Labour Court” or “Tribunal” includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.

(7) Where any industrial dispute, in relation to which the Central Government is not the appropriate Government, is referred to a National Tribunal, then notwithstanding anything contained in this Act, any reference in section 15, section 17, section 19, section 33A, section 33B and section 36A to the appropriate Government in relation to such dispute shall be construed as a reference to the Central Government but, save as aforesaid and



as otherwise expressly provided in this Act, any reference in any other provision of this Act to the appropriate Government in relation to that dispute shall mean a reference to the State Government.

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(8) No proceedings before a Labour Court, Tribunal or National Tribunal in relation to an industrial dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such Labour Court, Tribunal or National Tribunal shall complete such proceedings and submit its award to the appropriate Government.

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—



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(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.

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, Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner, --



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(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.”

22. Conciliation proceedings in public utility service. -- The Conciliation Officer, on receipt of notice of strike or lock-out given under rule 59 shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

23. Conciliation proceedings in non-public utility service. -- (1) where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to a public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

(2) The Conciliation Officer may hold a meeting of the representatives of both the parties jointly or of each party separately.

(3) The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

6 Now, coming to the case on hand, the union to which the workmen belong, raised an industrial dispute challenging the dismissal order passed by the Company. The main plea taken by the workmen, apart from other grounds, including fairness of enquiry and punishment imposed, was that the Company has violated Section 33(2)(b) of the Act and when an



workmen concerned, the Company ought to have filed an application under Section 33(2)(b) of the Act, before the Tribunal or Labour Court concerned, failing which, the order of dismissal itself is void *ab initio*.

7 Admittedly, there was a notice of conciliation on 11.09.2013 and the factum of non-filing of application under Section 33(2)(b) of the Act by the employer is also admitted in this case. When the industrial dispute was pending, the workmen were dismissed from service on various dates and the Government had referred the industrial dispute for adjudication on 02.04.2014.

8 The main contention of the Company is that when there is a failure by the Management in filing an application under Section 33(2)(b) of the Act, a complaint under Section 33-A of the Act needs to be filed. In this regard, the learned Senior Counsel appearing for the Company drew the attention of this Court to the following three judgments of the Supreme Court:

1	Rajasthan State Road Transport Corporation and another v Satya Prakash	(2013) 9 SCC 232
2	Management of Karur Vysya Bank Ltd. v S. Balakrishnan	(2016) 12 SCC 221
3	Managing Director, North-East Karnataka Road Transport Corporation v Shivasharanappa	(2017) 16 SCC 540



9 According to the learned Senior Counsel, when an industrial dispute is pending involving workmen, dismissal of the workmen, though for some other issue, requires the approval of the industrial adjudicator under Section 33(2)(b) of the Act.

10 In **S. Balakrishnan**, *supra*, when the employer did not file an application, the employee filed a complaint under Section 33-A of the Act. The Supreme Court, referring to the judgment of the Constitution Bench in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. [(2002) 2 SCC 244]**, held that the said decision may not be applicable to the facts of the said case and that, however, the said decision of the Constitution Bench requires reconsideration. In the said judgment, the Supreme Court had held that the employee need not await the outcome of his complaint under Section 33-A of the Act which itself has got to be treated as a reference under Section 10 of the Act. Paragraph 13 of the said judgment which is relevant in this regard is extracted below:

“13. The second issue that we had occasion to deal with in the course of the debates that had taken place on the issues/questions arising in the present case is with regard to what we perceive is a dichotomy between the provisions contained in Section 33(2)(b) and Section 33-A of the Act. In this regard, we take notice of the fact that the employer who does not carry out his/its statutory obligation under Section 33(2)(b) and yet prevents the workman from working and earning his wages virtually gets the benefit of an adjudication that the workman has been compelled to undertake in default of the statutory obligation on the part of the employer. The jurisdiction under Section 33(2)(b) is bound to be and in fact is narrower than the reference jurisdiction under Section 33-A. It is common experience that litigations including industrial references in this country have the tendency to remain pending beyond necessary and



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acceptable limits. In such a situation, can the workman be made to suffer by being made to stay away from work despite the lapse on the part of the Management in moving the industrial adjudicator for approval under Section 33(2)(b) of the Act. In other words, does he have to await the outcome of his complaint under Section 33-A which itself is to be treated as a reference under Section 10. The power of the Industrial Court to pass interim orders is hardly an answer. Our anxiety in this regard is aggravated by the fact that the present position in law is proposed to be extended in the proposed Labour Code on the Industrial Relations Bill, 2015 which contemplates “revision of the existing labour law”. We, therefore, had thought it proper to request either the learned Attorney General for India or the learned Solicitor General of India to appear before the Court and to assist us on the issue. The Court acknowledges the assistance rendered by both the learned Attorney General for India and the Solicitor General of India who have appeared in Court. The learned Attorney General for India has assured the Court that the matter will receive the attention of the highest authorities of the State. We, therefore, leave the matter to the wise decision of the executive and legislative arm of the State and end the issue on the above note.”

11 A 3 Judge Bench of the Supreme Court, in **Shivasharanappa, supra**, relied on by the learned Senior Counsel, has held that when there is a violation of Section 33(2)(b) of the Act, a complaint under Section 33-A of the Act needs to be adjudicated. In the said judgment, even though there is a reference to the judgment in **S. Balakrishnan, supra**, however, there is no reference to **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., supra**.

12 In the decision relied on by the learned Senior Counsel in **Rajasthan State Road Transport Corporation and another v Satya Prakash [(2013) 9 SCC 232]**, it has been held that a complaint under Section 33-A of the Act is maintainable for violation of Section 33(2)(b) of the Act and in the said judgment, various judgments of the Supreme Court have been referred to, including the judgment in **Punjab Beverages (P) Ltd. v Suresh**



Chand [(1978) 2 SCC 144], which was held to be bad by the Supreme Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., supra**. In **Satya Prakash, supra**, wherein, the employer has not filed an approval petition, the Supreme Court held that a complaint under Section 33-A, *supra*, is maintainable.

13 Further, in **Shivasharanappa, supra**, relied on by the learned Senior Counsel, the Supreme Court has held that after an adjudication under Section 33-A of the Act, the Labour Court cannot award reinstatement and grant other benefits that run counter to the decision of the Constitution Bench, *supra*.

14 It is to be pointed out that none of the three judgments relied on by the learned Senior Counsel appearing for the appellant is applicable to the case on hand, inasmuch as, they are clearly distinguishable not only on facts, but also, on law.

15 At this juncture, it will not be out of place to refer to a 3 Judge Bench of the Supreme Court, in **General Manager, Telecom v Sreenivasa Rao S. and others [1988 (1) LLJ 57]**, wherein, it has been categorically held that judicial discipline requires that the judgment of a Larger Bench should be followed. The relevant portion of the said judgment reads thus:



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“7. A two-Judge Bench of this Court in Theyyam Joseph case [(1996) 8 SCC 489] held that the functions of the Postal Department are part of the sovereign functions of the State and it is, therefore, not an “industry” within the definition of Section 2(j) of the Industrial Disputes Act, 1947. Incidentally, this decision was rendered without any reference to the seven-Judge Bench decision in Bangalore Water Supply [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] . In a later two-Judge Bench decision in Bombay Telephone Canteen Employees' Assn. case [(1997) 6 SCC 723 : AIR 1997 SC 2817] this decision was followed for taking the view that the Telephone Nigam is not an “industry”. Reliance was placed in Theyyam Joseph case [(1996) 8 SCC 489] for that view. However, in Bombay Telephone Canteen Employees' Assn. case [(1997) 6 SCC 723 : AIR 1997 SC 2817] (i.e. the latter decision), we find a reference to the Bangalore Water Supply case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] . After referring to the decision in Bangalore Water Supply [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] it was observed that if the doctrine enunciated in Bangalore Water Supply [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] is strictly applied, the consequence is “catastrophic”. With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven-Judge Bench decision in Bangalore Water Supply case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back — nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] . We must, therefore, add that the decisions in Theyyam Joseph [(1996) 8 SCC 489] and Bombay Telephone Canteen Employees' Assn. [(1997) 6 SCC 723 : AIR 1997 SC 2817] cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail.” (emphasis supplied)

16 Further, in **Padma Sundara Rao and others v State of Tamil Nadu and others [(2002) 3 SCC 533]**, the Supreme Court has held in no uncertain terms that law cannot be applied straightaway when facts are completely different.



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17 As already pointed out, all the three judgments relied on by the learned Senior Counsel deal with the issue as to whether a complaint needs to be filed when there is a violation of Section 33(2)(b) of the Act and the scope and ambit of Section 33-A of the Act. In the case on hand, the workmen, without filing complaints under Section 33-A of the Act through the Union, have raised an industrial dispute challenging their dismissal and one of the issues raised was that there is violation of Section 33(2)(b) of the Act.

18 At this juncture, it would be apposite to refer to the following paragraphs of the Constitution Bench judgment of the Supreme Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., supra.**

“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 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



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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 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



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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.”
(emphasis supplied)

19 The Constitution Bench held that the workman need not raise an industrial dispute when there is a violation by the employer in filing an application under Section 33(2)(b) of the Act seeking approval of their action or the one that is filed is withdrawn, then, the employee is deemed to be in service.

20 In the case on hand, though it has been pointed out that the workmen have committed grave misconducts, the factum that there is noncompliance of Section 33(2)(b) of the Act is admitted. Further, a reading of Rule 23 of the Tamil Nadu Industrial Dispute Rules, 1958, would make it clear that conciliation is deemed to have commenced once a notice of conciliation is received by the employer. In the instant case, as already stated, it is an admitted case that the Company has not filed an application under Section 33(2)(b) of the Act.

21 Though it has been contended by the learned Senior Counsel appearing for the appellant that domestic enquiry has been conducted fairly,



Section 33(2)(b) of the Act, which is a mandatory requirement, we are inclined to accept the case of the union and confirm the award of the Labour Court as upheld by the Single Bench.

22 Next, it is true that the Supreme Court, in **P.H. Kalyani v Air France, Calcutta, [1963 (1) LLJ 679]**, has held that once approval is granted, the dismissal order would relate back. But, such a situation does not arise here, as, admittedly, the Company has not filed an application seeking approval of their action in dismissing the workmen by filing an approval petition, which is a *sine qua non*, when an industrial dispute is pending between the parties.

23 In view of the foregoing discussion, in the light of the judgment of the Supreme Court in **Tamil Nadu State Transport Corporation v Neethivilangan, Kumbakonam [(2001) 9 SCC 99]**, we expect the Company to comply with the award within a period of three months from the date of receipt of a copy of this judgment. It is made clear that in case of noncompliance of the award, it is open to the workmen or the union to file a complaint under Section 29 of the Act against the officials of the Company following Section 32 of the Act. It is further made clear that while making a complaint in case of noncompliance of the award, the establishment need not

be made as a party in the light of the judgment of this Court in **P. Rajendran**



v The General Manager, TNSTC, Coimbatore Division, Erode – 1

(W.P.No.2869 of 2021 decided on 11.02.2021) in which, one of us (SVNJ), has considered the difference between Section 141 of the Negotiable Instruments Act and Section 32 of the Industrial Disputes Act. In case of noncompliance of the award, once a prosecution is sanctioned, the Criminal Court is expected to take up the matter and proceed with the same on a day-to-day basis without adjourning the matter beyond 15 working days at any given point of time. We hasten to add that the Government, while sanctioning prosecution, shall take note of the judgment of the Supreme Court in **Raj Kumar Gupta v Lt. Governor, Delhi and others [(1997) 1 LLJ 994]**, wherein, it has been held as under:

“15. The provisions of Section 34 require that no court shall take cognizance of any offence punishable under the said Act or of the abetment of such offence save on a complaint made by the appropriate Government or under the authority of the appropriate Government. There is no limitation therein in regard to the party to whom the authorisation may be given. It is the workman, the trade union and the employer who are most concerned with offences under the said Act and neither the terms of Section 34 nor public policy require that they should be excluded from making such complaints.” (emphasis supplied)

In the result, this writ appeal stands dismissed. Costs made easy.

Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
01.02.2024

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W.A. No.330 of 2024



S. VAIDYANATHAN, J.
and
K. RAJASEKAR., J.

cad

To

The Presiding Officer
Industrial Tribunal-cum-Labour Court
Puducherry

W.A. No.330 of 2024

01.02.2024