

**CWP-15652-2022**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

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**CWP-15652-2022  
Decided on : 04.03.2024**

M/s Benetton India Pvt. Ltd.

... Petitioner(s)

Versus

The Assistant Labour Commissioner, Circle-4,  
Gurugram, Haryana and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

**PRESENT:** Mr. Siddharth Dias, Advocate and  
Mr. G.S. Bhandal, Advocate  
for the petitioner(s).

Mr. Praveen Chander Goyal, Addl. AG, Haryana.

Ms. Abha Rathore, Advocate  
for respondent No.3.

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**SANJAY VASHISTH, J. (Oral)**

1. Petitioner – M/s Benetton India Pvt. Ltd., has filed present writ petition for quashing of the order dated 04.04.2022 (Annexure P-1), passed by the Assistant Labour Commissioner, Circle-4, Gurugram (respondent No.1 herein), whereby, application No.60/2021 filed by the petitioner – Management, under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short, 'ID Act'), has been dismissed.

2. Brief factual matrix of the case is that the Petitioner – Management is engaged in manufacturing of ready-made garment products under the trademark of 'Benetton India Ltd.'. On 01.09.1995, Petitioner – Management engaged respondent No.3 – Mr. Vinod Dixit (workman/employee), as helper, and posted him in the Printing Department

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of the factory.

However, workman was charge-sheeted vide letter dated 10.02.2020. At the time of issuance of charge-sheet, workman was working as Operator-2 in the Printing Department, and his last pay drawn was Rs.50,927/-. In the charge-sheet, following charges were levelled against him:-

- “1. You know that you are working as operator-2 in the organization. On 6.12.2019, you were on overtime for 5.30 PM to 9.30 PM. At 9.25 PM you asked Sh. Aman Kumar, E code 744, who was working under HRO Corporation in Printing Department, to bring big piece of cloth, then cut in 3 pieces and 2 pieces from them were took in pocket of jacket and carry them without any permission by violating the security rules and caused loss to the company.*
- 2. On dated 24.12.2019 at 9.00 A.M. when you came in the company, bring with you a dolli and kept that in the canteen and asked Ashok supervisor to fill that dolli with Chhole vegetale and you will carry the same in the evening. But due to visit of Sh. Vivek Mukharji Director, HR/IR, due to fear of capture, you did not take that dolli and kept that in the freezer and on next day. There was holiday of Christmas day and you came at 11.30 A.M. to carry that dolli. Besides this, you also bring Tomato and ginger etc. from canteen. If Ashok and any other worker deny taking the same, you being*

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*union representative threatened to terminate from the services. You are habitual of this.”*

3. To the said charge-sheet, detailed reply dated 13.02.2020 (Annexure P-4), was filed by the workman – Respondent No. 3. In sum and substance, the defence pleaded in the said reply is that – *it was very cold on 06.12.2019 and he took one piece of cloth for cleaning the motor-cycle and one piece, to cover his head. He also submitted that the piece was waste cloth and not fresh and he feel sorry for the same. In respect of 2nd charge, he further submitted that he bring a dolli for milk, which was carried by a co- worker and his dolli was stolen by someone. He made a complaint about that to Sh. Yaswant and Prince. He never carried any vegetable and tomato and other raw vegetables were taken to check their quality, as he was also a member of canteen committee. Thus, he denied the charges leveled against him.*

4. However, workman (respondent No.3) was dismissed from the service, and an amount of Rs.50,927/-, being one month's gross salary, in lieu of notice period of one month, was tendered along with the order of dismissal. Against the said order of dismissal, a demand notice under Section 2(k) of the ID Act was raised by the workman, which was under process, and therefore, the petitioner – Management, moved an application under Section 33(2)(b) of the ID Act, for seeking approval of the dismissal order.

5. During the pendency of the application under Section 33(2)(b) of the ID Act, before the Assistant Labour Commissioner, Circle-4, Gurugram (Respondent No.1), fearful of bias and injustice, petitioner –

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Management moved a complaint to the Labour Commissioner, Haryana, requesting transfer of the matter to next level of Senior Officer.

In pursuance to the said complaint, vide letter dated 31.03.2022 (Annexure P-15), Labour Commissioner, Haryana, asked the Deputy Labour Commissioner, Circle-1, Gurugram, to hear the complaint, at his own level. For the sake of convenience, contents of the said letter are reproduced herein-below:-

*“From*

*Labour Commissioner, Haryana,  
Chandigarh.*

*To*

*Deputy Labour Commissioner,  
Circle-1, Gurugram.*

*Sr. No. IR-I/2022/8911*

*Dated: 31.03.2022.*

*Subject:*

***M/s Benetton India Pvt. Ltd. Reqeust to transfer the matter to Application submitted for Approval under Section 33(2)(b) of the Industrial Disputes Act, 1947.***

*With reference to the above mentioned subject.*

*In this reference a letter received in this office on 24.03.2022 from the management of M/s Benetton India Pvt. Ltd., where, they told us about the case of Section 33(2)(b) of ID Act dated 12.07.2021 which is under consideration of Assistant Labour Commissioner, Circle 4.*

*Manager is not satisfied with the said action and they requested us to that the matter should be taken up by a senior officer.*

*While transferring the said complaint, it is directed that you should take the hearing the complaint at your level.*

*Enclosed/above mentioned.*

*Sd/-*

*For Labour Commissioner, Haryana*

*Date: 31.03.2022.”*

6. While referring the said letter, counsel for the petitioner –

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Management, argues that from the contents of the letter dated 31.03.2022, inference can be gathered that the Labour Commissioner, Haryana, had directed the Deputy Labour Commissioner, Gurugram to conduct the hearing in the application under Section 33(2)(b) of the ID Act, at his own level.

7. I do not find any substance in the submission made by counsel for the petitioner, because, plain reading of the letter dated 31.03.2022, makes it clear that merely the complaint received in the office of Labour Commissioner, Haryana on 24.03.2022, *qua* the proceeding pending before the Assistant Labour Commissioner (Respondent No. 1), was forwarded to the Deputy Labour Commissioner, Circle-1, Gurugram, to be looked into at the first instance.

8. Nothing beyond it, has been directed regarding the application filed under Section Section 33(2)(b) of the ID Act pending before the Assistant Labour Commissioner (respondent No.1), for its adjudication,.

9. Proceeding further, this Court has deeply examined the reasons given by the Assistant Labour Commissioner (respondent No.1) in the impugned order dated 04.04.2022 (Annexure P-1), whereby, the conduct of the Inquiry Officer has also been dealt with. Contention of the workman has also been recorded that he being Parchar Sachiv of Union, and also the member of the Canteen Committee, is considered a threat by the Management – Company, and therefore, baseless charges are levelled against him to oust him from the service. Thus, counsel for respondent No.3 – workman submits that the charges in the proceedings conducted by the Inquiry Officer are malicious.

10. While referring to charge No.2, counsel for respondent No.3 –

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workman also points out that to prove the said charge, Ashok (supervisor) was required to be examined during inquiry, but his statement to that effect has not been recorded. Further submits that the Assistant Labour Commissioner (Respondent No. 1) has rightly passed the detailed order, by considering the facts which were otherwise ignored by the Inquiry Officer and has reached to the conclusion that the inquiry conducted was not fair. Even the gross pay of the workman was Rs.51,577/- p.m., but he was paid Rs.50,927/- as one month notice pay. Thus, once the salary paid was less than the actual salary, the application of the Petitioner – Management under Section 33(2)(b) of the ID Act, was rightly dismissed not fulfilling the second essential requirement for approval of the application as mandated by the Act.

11. Findings recorded by the Assistant Labour Commissioner (respondent No.1) *qua* both the charges, for the purpose of dismissing the application under Section 33(2)(b) of the ID Act, is reproduced here-under also:-

*“ A perusal of the case file shows that there were 2 charges, one was carrying cooked vegetable (Chhole) from the canteen of the company and 2nd was carrying a piece of cloth from the company.*

*In relation to first charge, MW-5 Sh. Ashok Kumar Yadav stated that the cooked food relates to Contractor/owner of canteen Sh. Sandeep Gera. If any outsiders (Kabari etc.) come to the company, they got food against cash payment and that payment relates to Contractor and not of company.*

*Further the owner of canteen allowed him to carry surplus*

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*cooked food to their home. The charge that Sh. Vinod Dixit asked for cooked Chhole was objectionable to the owner of the canteen, but surprisingly, there was no complaint or authority letter to file complaint from the owner Mr. Sandeep Gera.*

*So far as 2nd charge is concerned, the charge is that Mr. Vinod Dixit carry a piece of cloth from the company. There is nothing that how long and what quality cloth was carried. There is nothing that he carried the cloth outside the gate of company. The evidence is that Sh. Vinod Dixit went in the evening from the company, on his motor-cycle and MW-2, Sh. Anil Kumar see him between 9.00 PM to 10.00 PM near village Nakhrola, going on foot and kept the cloth in his hand. Although there was winter season on 6.12.2019. the piece of cloth was so important that Sh. Vinod Dixit kept it in his hand, despite the fact that he took this piece of cloth by stolen.*

*These are some instances, but the Enquiry Officer did not see these facts and he found the workman guilty and gave his enquiry report against the workman. Although consideration of enquiry report is not in my jurisdiction, but above lines are given here just to show the fairness of the Enquiry Officer, The Enquiry Officer Mr. Mohan Saini is junior advocate of Sh. M.M. Kaushal, senior counsel of the management and also appearing in some cases along with Sh. Kaushal and in view of the above discussion, I am of the view that the Enquiry Officer was not fair while he prepared his*

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*enquiry report.*

*Further, a perusal of full and final settlement sheet shows that the gross pay of the workman was Rs.51577/- per month, but Rs.50927/- were paid as one month notice pay, while is less than the one month pay, which is violation of the point 2 of the essential requirement.*

*In view of the above discussion, I hold that the management had not complied with point 2 (payment of one month notice pay) and the Enquiry Officer was not fair and not prepared a fair and legal enquiry report.”*

12. Not only this, counsel for the Respondent No. 3 - workman relies upon the judgment of the Hon’ble Apex Court rendered in **Lalla Ram vs. Management of D.C.M. Chemical Works Ltd. and another, 1978 AIR (Supreme Court) 1004 : Law Finder Doc Id # 105225**, and submits that intent of the law makers while introducing the Section 33(2)(b) of the ID Act was to avoid victimization of employees and arbitrary actions of the Companies.

13. To support her submissions, Ms. Abha Rathore, counsel for respondent No.3 – workman reads out the paragraph No.12 of the judgment, which is reproduced here-under:-

*“12. The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings under section 33(2)(b) of the Act, the jurisdiction of the industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant*

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*rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in **Bengal Bhatdee Coal Co. v. Ram Probesh Singh, (1964) 1 SCR 709 : Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar (1961) 1 Lab LJ 511 (SC); Hind Construction & Engineering Co. Ltd. v. Their Workmen, (1965) 2 SCR 85; Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management, (1973) 3 SCR 587, and Eastern Electric and Trading Co. v. Baldev Lal, 1975 Lab IC 1435** that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the game transaction applied to the*

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*authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had **ordered the dismissal**. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”*

14. To substantiate her submissions, she also relies upon the another judgment of Hon’ble the Apex Court rendered in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma, 2002 AIR (Supreme Court) 643 : Law Finder Doc Id # 5302**, and refers to paragraphs No.12, 13 and 14, which are reproduced here-under:-

*“12. 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*

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*Section 33 invites a punishment under S.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 other 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 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*

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*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 are 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.*

*13. 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 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 employer and*

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*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 33A challenging the order granting approval on any of the grounds available to him. Section 33A 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 33A*

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*and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of 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 33A 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.*

*14. 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 33A, 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*

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*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 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A 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.”*

15. I have heard learned counsel for the parties and perused the material available on record.

16. This Court is also completely bound to follow the principle of law laid down by Hon’ble the Apex Court in the judgments mentioned in foregoing paragraphs. Otherwise also, this Court is of the view that the proceedings under Section 33(2)(b) of the ID Act, are not to be decided like a complete reference before it. Well reasoned order has already been passed and the findings recorded by respondent No.1, does not appear to be in-

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genuine from any angle.

Moreover, in no manner right of the petitioner – Management, has suffered prejudice, as the application filed by the Management has been dismissed with the reasons recorded therein. By taking into consideration, the principle laid down by the Hon’ble Apex Court that purpose of Section 33(2)(b) of the ID Act, is to avoid any kind of victimization of the employee at the hands of the Management, impugned order is worth to be maintained.

Thus, with the reasons recorded here-above, present writ petition is **dismissed**.

**(SANJAY VASHISTH)**  
**JUDGE**

**March 04, 2024**

*J.Ram*

*Whether speaking/reasoned:*      *Yes/No*

*Whether Reportable:*                *Yes/No*