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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15321-2023 (O&M)
Date of Decision:15.10.2024

M/S JAGRAN PRAKASHAN LTD. Petitioner

Versus

STATE OF PUNJAB AND OTHERS Respondents

Sr. No.	Case No.	Petitioner	Respondent
2.	CWP-15765-2023 (O&M)	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
3.	CWP-16752-2023	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
4.	CWP-16753-2023	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND ORS
5.	CWP-16754-2023	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND ORS
6.	CWP-16763-2023 (O&M)	M/S JAGRAN PRAKASHAN LTD.	STATE OF PUNJAB AND OTHERS
7.	CWP-16764-2023	M/S JAGRAN PRAKASHAN LTD.	STATE OF PUNJAB AND OTHERS
8.	CWP-16779-2023	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
9.	CWP-16782-2023 (O&M)	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
10.	CWP-16790-2023 (O&M)	M/S JAGRAN PRAKASHAN LTD V/S	STATE OF PUNJAB AND OTHERS
11.	CWP-16805-2023	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND ORS
12.	CWP-16808-2023 (O&M)	M/S JAGRAN PRAKASHAN LTD	STATE OF PUNJAB AND OTHERS
13.	CWP-16812-2023 (O&M)	M/S JAGRAN PRAKASHAN LTD.	STATE OF PUNJAB AND OTHERS
14.	CWP-16814-2023	M/S JAGRAN PRAKASHAN LTD	STATE OF PUNJAB AND OTHERS

15.	CWP-16817-2023	M/S JAGRAN PRAKASHAN LTD	STATE OF PUNJAB AND OTHERS
16.	CWP-16818-2023	M/S JAGRAN PRAKASHAN LTD.	STATE OF PUNJAB AND OTHERS
17.	CWP-16821-2023 (O&M)	M/S JAGRAN PRAKASHAN LTD	STATE OF PUNJAB AND OTHERS
18.	CWP-16835-2023 (O&M)	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
19.	CWP-16836-2023 (O&M)	M/S JAGRAN PRAKASHAN LTD	STATE OF PUNJAB AND OTHERS
20.	CWP-16837-2023	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
21.	CWP-16838-2023 (O&M)	M/S JAGRAN PRAKASHAN LTD.	STATE OF PUNJAB AND OTHERS
22.	CWP-16839-2023 (O&M)	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
23.	CWP-16841-2023 (O&M)	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
24.	CWP-16845-2023 (O&M)	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
25.	CWP-16846-2023	M/S JAGRAN PRAKASHAN LTD.	STATE OF PUNJAB AND OTHERS
26.	CWP-16847-2023 (O&M)	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS
27.	CWP-16851-2023	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND ORS
28.	CWP-16857-2023 (O&M)	M/S JAGRAN PRAKASHAN LIMITED	STATE OF PUNJAB AND OTHERS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Manoj Dubey, Advocate,
Ms. Ojaswini, Advocate,
Mr. Bijender Sharma, Advocate
Mr. Kanwal Goyal, Advocate and
Ms. Sheena Dahiya, Advocate
for the petitioner.

Ms. Neelam Sharma, Advocate for
Mr. Hemant Bassi, Advocate
for the petitioner in CWP No.15765 of 2023.



Mr. Ramandeep Singh, Sr. DAG, Punjab.

Mr. Labh Singh Sandhu, Advocate with
Mr. Sudhakar, Advocate
for respondent No.4.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, a bunch of 28 petitions is hereby disposed of since issues involved and prayer sought in the captioned petitions are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-15321-2023.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 29.07.2022 (Annexure P-51) whereby Labour Court has answered the reference in favour of respondent No.4- workman.

3. The petitioner is a Public limited Company and engaged in the business of publication of newspaper. The respondent No.4-Avtar Singh is an ex-employee of the petitioner. The Trade Union served a demand notice upon petitioner and matter came to be referred to Industrial Tribunal. The demand notice was served on 15.09.2015 under Section 2-K of Industrial Disputes Act, 1947 (for short 'ID Act'). The petitioner and respondent time to time appeared before the Conciliation Officer. The proceedings continued from October' 2015 to 29.04.2016. The workers' Union on 29.04.2016 withdrew its demand notice dated 15.09.2015 and Conciliation Officer closed the matter. The Union on the very same date i.e. 29.04.2016 submitted another demand notice. The earlier demand notice was withdrawn on account of technical defect. A



meeting of members of the workers' Union took place wherein it was noted that copy of demand notice be sent through registered post to Management. The said meeting also took place on 29.04.2016. The Conciliation Officer on 29.04.2016 sent post notice to petitioner through registered and asked to appear alongwith record on 23.05.2016.

4. While the proceedings *qua* earlier demand notice were pending before Conciliation Officer, the petitioner placed respondent-workman under suspension on 05.10.2015 and served charge-sheet on 16.10.2015. The workman filed reply to said charge-sheet denying all the allegations. Finding reply unsatisfactory, the petitioner appointed an Enquiry Officer who concluded that workman is guilty of misconduct and indiscipline. On the basis of report of Enquiry Officer, the workman came to be discharged from service on 30.04.2016.

5. The workman in terms of Section 10 of 1947 Act approached Industrial Tribunal by way of reference made by State Government. The reference made by State Government reads as below:

“xxxx xxxx xxxx xxxx

*I am of the opinion that there is a dispute in between
workman Sh. Shivesh Kumar Mishra through Sh. B.N.
Sehgal, Advocate, District Court, Ludhiana AND
(1) M/s Jagran Prakashan Limited, D-360, Phase-8,
Focal Point, Ludhiana
(2) M/s Jagran Prakashan Limited, Jagran Building,
Sarvedhya Nagar, Kanpur.
(3) M/s Jagran Prakashan Limited, Shop-cum-Office
43-44, Sector 8C, Chandigarh.*

*As such, while exercising the powers conferred
upon me as per Section 2A and para (c) of Section
10(1) of Industrial Disputes Act, 1947 and notification*



No. 1/22/04-4 Labour/1091 dated 19.03.2008 issued by Punjab Government, I hereby forward the dispute between the Workman and the Management to Industrial Tribunal, Ludhiana constituted under section 7 of the Act for passing an award within three months, on the below mentioned question -

"Whether services of workman Sh. Avtar Singh were terminated by the owners /management in an illegal and inappropriate manner?. If yes, then to what extent the workman is liable to get the benefit and what would be the benefits?

*Sd/-Hardeep Singh
Labour and Conciliation Officer
Circle No.3, Ludhiana."*

6. The Industrial Tribunal by impugned order dated 29.07.2022 answered the reference in favour of the workman. The workman was ordered to be reinstated with 40% back wages and consequential service benefits.

7. Mr. Sanjay Kaushal, Senior Advocate for the petitioner submits that Labour Court has answered reference in favour of the workman on the sole ground that there was violation of Section 33(2)(b) of ID Act on the part of Management. The Management has discharged workman without seeking approval of Conciliation Officer. The workman was discharged from service on 30.04.2016 and on the said date, demand notice was pending before Conciliation Officer. As dispute was pending with Conciliation Officer, the workman could not be discharged without prior approval of Conciliation Officer.

The findings of Industrial Tribunal are factually incorrect because no conciliation proceedings were pending on 30.04.2016. The workers' Union withdrew its demand notice on 29.04.2016 and filed fresh



claim on 29.04.2016. The notice of said demand notice was sent to petitioner through registered post which was received on 06.05.2016. The workman was discharged from service during the intervening period, thus, there was no violation of Section 33(2)(b) of ID Act.

8. Per contra, Mr. Labh Singh Sandhu, Advocate for respondent No.4 submits that charge-sheet was served upon workman by an incompetent Officer and on the date of service of charge-sheet and conclusion of enquiry, the matter was pending before Conciliation Officer. The fresh reference was filed on 29.04.2016 and this fact was in the knowledge of Management. The Management cannot take advantage of the fact that notice of fresh proceedings was sent through registered post and it was received after 30.04.2016. There was clear violation of mandate of Section 33(2)(b) of ID Act, thus, Industrial Tribunal has rightly answered in favour of the workman. The workman is claiming wages as per Majithia Wage Board recommendations, thus, workman could not be discharged from service as per Section 16A of Working Journalists and Other Newspaper Employees (Conditions of Service) And Miscellaneous Provisions Act, 1955 (for short '1955 Act').

9. I have heard arguments of both sides and scrutinized record with their able assistance.

10. The dispute lies in the narrow compass. The petitioner is claiming that at the time of discharge of workman, no proceeding was pending before Conciliation Officer, thus, there was no need to comply with mandate of Section 33(2)(b) of ID Act whereas workman is claiming that proceeding was pending before Conciliation Officer at the time of his discharge, thus, Management was bound to comply with



mandate of Section 33(2)(b) of ID Act.

11. The Industrial Tribunal has held that there was non-compliance of mandate of Section 33(2)(b) of ID Act on the part of Management, thus, discharge of workman was illegal and bad in the eye of law. The bedrock of findings of Industrial Tribunal is reading of Section 33 of ID Act which for ready reference is reproduced as below:

“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—

(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.”

12. From the reading of aforesaid Section, it is evident that a workman cannot be discharged or dismissed from service, if proceeding



in respect of an Industrial Dispute is pending before Conciliation Officer or a Board or Industrial Tribunal. Sub-section (2) does not create absolute bar to dismiss or discharge a workman, however, creates a caveat in the form of prior approval of Conciliation Officer. The object of said caveat is to protect the workman from being discriminated or arbitrarily punished by Management.

13. In the case in hand, the Management is claiming that no proceeding was pending before Conciliation Officer, thus, there was no question to seek approval of Conciliation Officer. Thus, it is inevitable to find out whether proceeding was pending before Conciliation Officer or not.

14. On the demand notice of workers' Union, matter remained pending before Conciliation Officer from October' 2015 to 29.04.2016. Those proceedings emanated from demand notice dated 15.09.2015. The said demand notice was served upon Managing Director, Chief Executive Officer, Chief General Manager and General Manager of the Company, however, notice was not served upon Company itself which is a Public Limited Company. The workers' Union in its meeting dated 29.04.2016 resolved to withdraw demand notice dated 15.09.2015 and file fresh demand notice. The resolution of Union and proceedings before Conciliation Officer dated 29.04.2016 are reproduced as below:

Resolution

“The meeting of office bearers and employees of Jagrna Prakash Employees Union, Punjab has been held under the leadership of Vindu, Union President. The meeting has been held in the house of Secretary Manager and it has been discussed about General



Demand Notice (2K). In the meantime, the office bearers has informed all the members that as per the decision taken, today on dated 29.04.2015 (correct date i.e. 29.04.2016), the demand notice (2K) dated 15.09.2015 is hereby withdrawn and amended demand notice (2K) will be handed over to Assistant Labour Commissioner, Circle-3, Ludhiana in the presence of Senior General Manager of Jagran Prakash Limited Company. Further one copy of the amended demand notice (2K) is hereby sent through registered post to the address of the company.”

Proceeding before Conciliation Officer:

“Neeraj Sharma, General Manager has come present on behalf of Management. Inderjit Singh representative of Union have come present. Workers of the organization have come present.

The representative of the union has withdrawn demand notice dated 15.09.2015 on the technical ground and new demand notice has been given to this office. Because demand notice dated 15.09.2015 has been withdrawn, therefore the same is consigned in the office.”

15. Pursuant to aforesaid resolution, fresh demand notice was filed with Assistant Labour Commissioner. The said authority issued fresh notice to petitioner. The Assistant Labour Commissioner sent notice through registered post *qua* fresh demand notice to Management on 29.04.2016. The notice dated 29.04.2016 is reproduced as below:

“In reference to the above cited subject, I am conducting the preliminary enquiry. Therefore, it is again informed to you to come present alongwith concerned record such as attendance, salary and leave register etc. in this office at 11:00 AM on 23.05.2016.”



16. From the perusal of resolution dated 29.04.2016 of the worker's Union and communication dated 29.04.2016 from Assistant Labour Commissioner, it is evident that notice of fresh demand notice was sent to Management through registered post. The date of dispatch of notice is 29.04.2016 and as claimed by petitioner it was received on 06.05.2016. There is no rebuttal to said fact. The Industrial Tribunal has formed an opinion that petitioner was aware of fresh demand notice on 30.04.2016.

17. Rule 10 of the Industrial Disputes (Central) Rules, 1957 provides that where the Conciliation Officer receives any information about an Industrial Dispute, he shall give formal intimation in writing to the parties concerned declaring his intention to commence conciliation proceedings w.e.f. such date as may specified therein. Rule 10 is reproduced as below:

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

18. The Conciliation Officer in compliance of aforesaid Rule sent intimation to petitioner through registered post on 29.04.2016. It cannot be presumed that notice sent on 29.04.2016 was received on the very next day i.e. 30.04.2016. In the notice dated 29.04.2016, the



petitioner was asked to appear alongwith record on 23.05.2016. The said date i.e. 23.05.2016 was date of commencement of conciliation proceedings. Section 33 of ID Act inhibits Management from dismissing or discharging an employee without seeking approval of Conciliation Officer where proceedings are pending. The workers' Union concededly filed demand notice on 29.04.2016, however, notice by Union as well as Conciliation Officer was sent by registered post on 29.04.2016. Mere filing of demand notice cannot be called as pendency of proceedings. Section 33(2) needs to be read with Rule 10 of 1957 Rules. From the conjoint reading of both provisions, it is evident that conciliation proceedings commence w.e.f. date as specified by Conciliation Officer.

19. In the present case, Conciliation Officer sent notice dated 29.04.2016 to commence proceedings w.e.f. 23.05.2016. In any case, mere filing of demand notice cannot be treated as pendency of proceedings. In the absence of notice, the Management cannot be burdened with duty to seek approval in terms of Section 33(2) of ID Act. The question of approval arises after at-least receipt of notice by Management. The notice in the instant case was sent by registered post on 29.04.2016 and punishment order was passed on 30.04.2016. It cannot be presumed that demand notice was served upon Management on 29.04.2016 or 30.04.2016.

20. The Industrial Tribunal has answered the reference in favour of the workman merely applying Section 33(2)(b) of ID Act. The Labour Court has not examined validity of enquiry and action taken by petitioner, meaning thereby, the question of discharge from service has not been examined on merits. The respondent is raising before this Court many

issues which are directly related to merits of the dispute. As Industrial Tribunal has not adverted with validity of dismissal from service on merits except on technical ground, the matter needs to be examined on merits.

21. In the wake of above discussion and findings, this Court is of the considered opinion that instant petitions deserve to be allowed by way of remand and accordingly impugned orders are hereby set aside and matter is remitted back to Industrial Tribunal to pass fresh order on merits. The parties at the first instance are directed to appear before Industrial Tribunal, Ludhiana on 05.11.2024 and thereafter as directed by Tribunal. The matter is pending since 2016, thus, Tribunal is requested to adjudicate the matter expeditiously.

22. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

15.10.2024
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>