



2024:DHC:6001



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

% **Reserved on : 7<sup>th</sup> May, 2024**  
**Pronounced on: 6<sup>th</sup> August, 2024**

+ **W.P.(C) 1376/2024 and CM APPL. Nos.5653/2024 and 19817/2024**

**M/S DEUTSCHE LUFTHANSA AG** ..... Petitioner  
Through: **Mr. J.P. Cama, Senior Advocate**  
with **Mr. Anil Bhat, Mr. Akhil**  
**Anand Kumar and Mr. Prem**  
**Anand, Advocates**

versus

**MR. NAYAN PAHWA & ORS.** ..... Respondents  
Through: **Mr. Mahabir Singh, Sr. Advocate**  
with **Mr. Vedant Singh, Mr.**  
**Vishisht Singh, Mr. Veerender**  
**Kumar and Mr. Navneet Singh,**  
**Advocates for R-2**

**CORAM:**  
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **J U D G M E N T**

#### **CHANDRA DHARI SINGH, J.**

1. The instant petition under Articles 226 read with Article 227 of the Constitution of India has been filed on behalf of the petitioner challenging the award dated 3<sup>rd</sup> July, 2023 passed by the learned Central Government Industrial Tribunal cum Labour Court- II, New Delhi in case bearing I.D. no. 21/2021 (hereinafter "Impugned Award").



2024:DHC:6001



## **FACTUAL MATRIX**

2. The petitioner is an international airlines carrier which employed the respondents, the members of the Lufthansa Cabin Crew Association, on a fixed term basis as crew members for a period of five years on permanent rolls.

3. In the year 2018, with regard to their service condition, the respondents had submitted a charter of demands to the petitioner management. Upon failure of a mutual agreement on the same, a conciliation proceeding was initiated before the Labour Commissioner.

4. After discussion on several rounds the conciliation failed and the appropriate Government referred the matter to the learned Central Government Industrial Tribunal cum Labour Court, New Delhi vide order dated 22<sup>nd</sup> January, 2018 for adjudication in terms of the reference and the said dispute is pending before the learned Tribunal in case bearing I.D. No. 5/2018.

5. The petitioner subsequently underwent financial crisis due to pandemic and undertook several HR measures including continuance of employment on unpaid leave for two years. The same was accepted by the crew members and a settlement was signed on 23<sup>rd</sup> December, 2020. However, because of internal issues with the workmen Union, only the permanent crew members agreed to proceed on unpaid leave.

6. In these circumstances, it allegedly became unviable for the petitioner management to maintain a large number of crew members as flights were grounded due to pandemic. Due to the same, the petitioner



2024:DHC:6001



terminated the services of the crew members vide order dated 2<sup>nd</sup> February, 2021.

7. The Lufthansa Cabin Crew Association, being alleged representative of the now terminated fixed term cabin crew members, challenged the aforesaid termination of their employment by raising a dispute which got referred to the learned Central Government Industrial Tribunal-cum-Labour Court-I, Delhi, and registered as case bearing I.D. no. 138/2021. The adjudication of said dispute is pending before learned CGIT.

8. During the pendency of the dispute I.D. no. 5/2018, the respondents filed the application bearing I.D. no. 21/2021 under Section 33A of the Industrial Disputes Act, 1947 (hereinafter “ID Act”), stating therein that the petitioner management terminated their fixed term employment contracts during pendency of the dispute without obtaining the permission or approval of the learned Tribunal, therefore, contravening the provisions of Section 33 of the ID Act.

9. Pursuant to completion of the proceedings, the learned Tribunal passed the impugned award dated 3<sup>rd</sup> July, 2023, thereby, reinstating the 17 workmen along with backwages. Aggrieved by the same, the petitioner management has approached this Court seeking setting aside of the same.

### **PLEADINGS BEFORE THIS COURT**

10. The petitioner has filed the instant petition challenging the impugned award on following grounds:



*“A. BECAUSE the Learned Tribunal failed to appreciate that the pending dispute I.D. 05 of 2018 is not an ‘industrial dispute’ and issues with regard to its maintainability as well as valid espousal is yet to be decided by the Learned Tribunal. It is submitted that the Learned Tribunal ought to have decided the said issues first and only if there was a positive finding on the same, it could have taken cognizance of the present complaint and decided the same thereafter. Since, any decision on the same would be a pre-requisite for a complaint under Section 33A of the ID Act to be maintainable, the Learned Tribunal ought to have taken cognizance only if the pending dispute in respect of Section 33 of the Act, to be an industrial dispute within the meaning of Section 2 (k) of the I.D. Act. It is pertinent to note herein that in the absence of a positive finding to this effect the question of complaint under taken cognizance of does not arise. In the present case, that the said dispute was an ‘industrial dispute’ within assumed jurisdiction to decide the complaint under now done in the present case. The Impugned Award is Act and the law laid down by the Hon’ble Supreme Court of in case of Ramanath V. Bhat reported as (1968) 1 SCR 327 and by various Hon’ble High Courts in case of 1973 (2) LLN CAL, Gauri Shankar Oil Mills Vs. KAR 179, Management of Dainik Naveen Duniya vs. Presiding Officer, Labour Court, 1994 (3) LLJ 510 MP and Taj Services Ltd. Vs. Industrial Tribunal which the same has been filed alleging contravention of Section 33A of the ID Act being maintainable or to be it was incumbent upon the Learned Tribunal to first decide the issue as was framed in I.D. No. 05 of 2018 the meaning of 2(k) and then only it could have Section 33A of the ID Act and not otherwise as has been in complete contravention of the provisions of the I.D. Syndicate Bank Limited Vs. K. Shalimar Paints Limited Vs. 3rd Industrial Tribunal, Industrial Tribunal & Others, 1961 SCC Online, 38 Delhi & Others 2011 (125) DRJ 60. The Impugned Award is thus liable to be set aside.*



*B. BECAUSE the Learned Tribunal, even before the pending dispute was decided to be an industrial dispute within the meaning of Section 2(k) of the ID Act, without any basis assumed it to be so. The Learned Tribunal came to a very incorrect and illogical conclusion that since the Claimants were aware of the pending dispute, the complaint I.D. 21 of 2021 is a connected dispute completely misinterpreting the provisions of Section 33 and Section 33A of the ID Act. The Learned Tribunal failed to appreciate that pendency of a mere dispute and that of an industrial dispute is entirely different. So far as industrial dispute is concerned, it has to fulfill the conditions and requirements of Section 2(k) of the ID Act including for instance whether the dispute was duly espoused in accordance of the requirement of law, unlike a dispute which is merely an individual dispute unless it gets converted into an industrial dispute by being espoused as required in law. The Learned Tribunal without any cogent reasons contrary to the settled principles of law arrived at a different meaning and definition of a connected dispute that is not what is provided in the I.D. Act and is completely contrary to the law as laid down by the Hon'ble Supreme Court.*

*C. BECAUSE the Learner Tribunal failed to appreciate that the proceedings under Section 33A of the ID Act could not be decided during the pendency of I.D. No. 5 of 2018 as the same would result in serious anomaly because if the present complaint which was filed by the Respondent Claimant on the basis of pending I.D. 05 of 2018 is held to be not an industrial dispute which is yet to be decided, in that case the Impugned Award passed Respondent would create a serious legal complicity and would defeat the very process of provisions applicable. In view of the same, the Impugned Award is unsustainable in law and liable to be set aside.*



*D. BECAUSE the Learned Tribunal failed to appreciate that the complaint was not maintainable in respect of crew member whose names appeared in Annexure A annexed with the complaint inasmuch as neither the complaint was signed and verified by them nor did they record their evidence in the present complaint. It is submitted that a complaint filed under Section 33A of the ID Act is akin to a plaint which ought to have been compulsorily signed, verified and pursued by all the crew members and not just by the Respondents. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in the case of Shankar Chakravarti versus Britannia Biscuit Co. Ltd. & Another reported as 1979 (3) SCC 371. The Learned Tribunal ought to have considered this aspect prior to passing the Impugned Award. The Impugned Award is thus liable to be set aside.*

*E. BECAUSE the Learned Tribunal failed to appreciate that the Respondents were not having a valid authorization on behalf of crew members whose names appeared in Annexure A at the time of filing of the complaint. The Learned Tribunal while passing the Impugned Award though has concluded that there was no authority letter executed by the complainants as on the date of filing of the complaint but surprisingly took into account some copies of authority letters purportedly signed by these individuals, much later during the proceedings and the perusal of these letters would also show that these two Respondents / complainants were not authorized to sign, file, pursue and appoint Advocates. These so-called complainants did not at any time appear before the Learned Tribunal to confirm that these letters were issued by them only. The Learned Tribunal has without any basis concluded that the so called complainants had handed over documents related to their employment with the Complainant /Respondents, whereas there is no evidence to prove the same thus, is unfounded and baseless. The*



*Impugned Award suffers from infirmity and is unsustainable in eyes of law.*

*F. BECAUSE the Learned Tribunal failed to appreciate that the termination of a fixed term employment of the Respondent / Claimant was not punitive in nature but was a termination simpliciter which is an exception to the definition of retrenchment as defined in Section 2(oo) (bb) of the I.D. Act. Since, the termination was not punitive in nature the question of Section 33 of the ID Act being contravened or the complaint under Section 33A being maintainable did not arise. The finding of the Learned Tribunal that the termination of the Complainant was punitive in nature besides being farfetched, without any pleadings is against the law laid down by the Hon'ble Supreme Birla VXL Limited Vs. State of Punjab & Others, 1998 LLR 1167 and Blue Star Employees Union Vs. Ex. Off Private Secretary Government, 2000 (8) SCC 94. Moreso, the Learned Tribunal itself vide order dated 11.12.2018 already held that the termination of fixed term contract does not amount to punitive termination and there cannot be any contravention of Section 33 of the ID Act in such a case. The Impugned Award is liable to be set aside on this ground alone.*

*G. BECAUSE the Learned Tribunal failed to appreciate its own order dated 11.12.2018 passed in I.D. 197 of 2018 which was a complaint similar to the present one filed under Section 33A of the ID Act in same pending dispute bearing I.D. No. 5 of 2018. It is submitted that the Learned Tribunal in the said order rightly held that in case of termination of fixed term employment contracts there is no contravention of Section 33 of the ID Act and no complaint can be made as the same is not maintainable.*

*H. BECAUSE the Learned Tribunal at the first instance framed an issue whether the pending dispute was a*



*connected dispute to the termination of employment of the Respondent Claimants, but no evidence was led by the Claimants on the said issue, however, surprisingly the Learned Tribunal gave entirely a different finding that the pending dispute was a concerned dispute under Section 33(2)(b) of the Act. The Learned Tribunal without appreciating the correct legal proposition kept changing the process of adjudication taking the Petitioner by surprise and depriving it of the opportunity to defend itself. The Learned Tribunal did not give a finding on the issue that was framed i.e. whether the dispute was a connected dispute but gave a finding on the issue which was never framed; thus, is a nullity in law and not sustainable.*

*I. BECAUSE the Learned Tribunal after having framed the issue on espousal of the dispute did not give any finding on the same. The Impugned Award is thus liable to be set aside on this ground alone.*

*Q. BECAUSE the Impugned Award passed by the Learned Tribunal is illegal inasmuch retrenchment does not amount to change of condition of service and therefore, the findings of the Tribunal that the Petitioner did not comply with the provisions of Section 25F and 25G of the ID Act is illegal and without jurisdiction.*

*R. BECAUSE the Learned Tribunal failed to appreciate that the Respondents were appointed on a fixed term contract and its termination as per stipulation contained in the contract is an exception to the definition of retrenchment under Section 2(oo)(bb) of the ID Act. Thus, the Petitioner was not obligated to comply with Sections 25F and 25G of the ID Act*

*S. BECAUSE the Learned Tribunal failed to appreciate that Ms. Shalini Sharma was not a competent witness to depose on behalf of Respondents / alleged complainants.*



*T. BECAUSE the Learned Tribunal got into the question of what qualifies as a misconduct which is the managerial discretion of the employer.*

*U. BECAUSE the Impugned Award has been passed without considering the applicable law as well as the facts of the present case.*

*V. BECAUSE the Impugned Award passed by the Learned Tribunal is based on mere conjectures and surmises.*

*W. BECAUSE the Impugned Award passed by the Learned Tribunal eschews relevant facts and proceeds on assumptions and inferences which cannot be sustained on the evidence on record.*

*X. BECAUSE the Impugned Award has been passed by the Learned Tribunal without affording an equal opportunity of being heard.”*

11. In reply, the representative of the employees has filed the following brief synopsis:

**“I. PETITION SUFFERS FROM DELAY & LATCHES:**

*The Respondent No. 2 submits that the award impugned in the present Writ Petition was passed on 03.07.2023. Pursuant to which, the said award was published on official gazette on 13.09.2023. However, the Petitioner after waiting for a period of over 5 months, have filed the present Petition at the belated stage solely to deprive the Respondent and other beneficiary of the award from the benefit of award.*

**II. PETITIONER HAD APPROACHED THE COURT WITH UNCLEAN HANDS**



a. The Petitioner herein had earlier filed Writ Petition (Civil) No. 3962 of 2023 before this Hon'ble Court against the order dated 24.03.2023 passed by the Ld. Tribunal. The Ld. Tribunal vide order dated 24.03.2023 had dismissed the application for keeping the I.D. No. 21 of 2021 in abeyance till the disposal of I.D. No. 5 of 2018, which pertains to charter of demand, filed by the Union/Association of the Respondent. The Petitioner in the said application had contended that since the issue as to whether the dispute i.e., I.D. No. 5 of 2018 is an "Industrial Dispute" or not is yet to be adjudicated, therefore the proceeding of I.D. No. 21 of 2021 be kept in abeyance or rejected. The Ld. Tribunal vide detailed order dated 24.03.2023 rejected the application based on the facts of the case and after differentiating the particular facts with the case of *Syndicate Bank Limited V.s K. Ramanath V. Bhat* (1968) SCR 327 AIR 1968 SC 231 and *M/s. Gowrishanker Oil Mills Vs. Industrial Tribunal & Ors.*. The Ld. Tribunal categorically observed that the legislator by their wisdom have not stated that for invoking the provisions of Section 33 A, the condition precedent are there is a finding that the dispute pending prior to the initiation of the proceedings u/s. 33A is an industrial dispute. The intention of the legislator is clear form the use of the words "during pendency of the proceeding". (Annexure R-1)

b. That based on the observation falling from this Hon'ble Court, the Petitioner was constrained to withdraw the said Petition with liberty to approach Ld. Tribunal for expeditiously deciding the preliminary issue in ID No. 05 of 2018 and the same was allowed vide order dated 28.03.2023 (Annexure R-2) The Petitioner thereafter preferred an application agitating before the Ld. Tribunal for adjudication of issue of jurisdiction as a preliminary issue in I.D. No. 5 of 2018. However, the Ld. Tribunal by observing that the application is filed at belated stage, dismissed the said application vide its order dated 10.04.2023. (Annexure R-3)



c. Accordingly, the Petitioner once again preferred Writ Petition (C) No. 4763 of 2023 assailing the order dated 10.04.2023 on the grounds that the Respondent has denied the requirement to prove the espousal of the dispute, as required under the law. Pursuant thereto, this Hon'ble Court vide its order dated 17.04.2023 disposed off the said Writ Petition by rejecting the prayer, however this Hon'ble Court extended three weeks' time to conclude the evidence, before the Ld. Tribunal. **(Annexure R-4) III. WRIT PETITION IS HIT BY CONSTRUCTIVE RES JUDICATA**

The Respondent submits that the Petitioner has already agitated various issues, which also forms part of the present Petition, before this Hon'ble Court in earlier Writ Petition and has miserably failed to succeed in the same. The issues with regards to "existence of Industrial Dispute" as well "espousal of dispute" has already been decided in the earlier Writ Petition and accordingly the Petitioner were constrained to withdraw/not press the Writ Petition. Thus, the Petitioner cannot be allowed to raise the aforesaid issues in the present Writ Petition as the same is hit by constructive res-judicate.

**IV. ISSUE WHETHER I.D. NO. 5 OF 2018 IS AN "INDUSTRIAL DISPUTE"**

The Ld. Tribunal vide detailed order dated 24.03.2023 has dealt with the aforesaid issue and has categorically observed that the legislator by their wisdom have not stated that for invoking the provisions of Section 33 A, the condition precedent are there is a finding that the dispute pending prior to the initiation of the proceedings u/s. 33A is an industrial dispute. The intention of the legislator is clear from the use of the words "during pendency of the proceeding". **(Annexure R- 1 Pg. 30)**

The Respondent submits that the issue whether I.D. No. 5 of 2018 is an "Industrial Dispute" or not has already been decided by the Ld. Tribunal in I.D. No. 197 of 2018. The Ld. Tribunal vide order dated 11.12.2018 has held "**The undisputed facts of this case are that and Industrial**



*Dispute is pending between the parties. It is also not disputed that the complainant in this proceeding have been served with notice for termination of their contract having the effect of termination of their employment. The only question is to be decided in this proceeding- if service of the said notice amounts to termination falling under the scope of Section 33". The Petitioner has not challenged the aforesaid finding of the Ld. Tribunal, thus the Petitioner at this stage cannot take a plea that the I.D. No. 5 of 2018 is not an Industrial Dispute. (Annexure R-5)*

**V. COMPLAINT UNDER SECTION 33-A OF THE ACT CAN BE FILED ONLY BY INDIVIDUAL AGGRIEVED PERSONS: WRONG**

*The Petitioner, in the present Writ Petition, has also raised the objection that the Complaint under Section 33-A of the Act can be filed only by individual aggrieved persons, and it cannot be filed through another individual. The Petitioner has also contended that the Complaint is not maintainable as the same has been verified by only two person (Respondent Nos. 1 and 2) and the remaining complainants have not signed or verified the Complaint. Further, the Petitioner has also contended that the other complainants did not chose to testify as witness. The Respondent states and submits that in the present I.D. No. 21 of 2021, the Respondents have made categorical averment that they were filing the Complaint on behalf of themselves and other 23 crew members. The other 23 member had executed Letter of Authority in favour of the Respondents and the Advocates in Form F prescribed under the Rule. The Ld. Tribunal also while dealing with the aforesaid contention had come to the finding that the in the absence of any clear rule or procedure for filing the application under Section 33A individually by the aggrieved persons, this Tribunal finds no reason of rejecting the authority letter in form F and the joint complaint application filed by the authorized persons. Thus, the aforesaid contention of the Petitioner is bereft of any merit and ought to be discarded.*



## **VI. ISSUE OF ESPOUSAL**

*The Ld. Tribunal in the impugned award has also considered the issue of espousal. It is submitted that I.D. No. 5 of 2018 was pending on the date of termination of the complainants. The Management had already entered appearance and was well aware of the pendency of I.D. No. 5 of 2018. It is also not in dispute the complainants in I.D. No. 21 of 2021 are directly connected to proceedings of I.D. No. 5 of 2018, as it pertains to general demands of cabin crew. The Ld. Tribunal had rightly held that there is valid espousal, and the maintainability of the said proceedings cannot be challenged on that ground. It is also pertinent to mention that in a dispute with regards to the same management, the Ld. Tribunal vide its order dated 11.12.2018 passed in ID No. 197 of 2018 had already observed that I.D. No. 5 of 2018 is an Industrial Dispute and the same having remain unchallenged has attained finality. The Petitioner thereby cannot take the plea of valid espousal and validity before this Hon'ble Court as the same stands rightly adjudicated by the Ld. Tribunal. This Hon'ble Court has also clearly expressed its opinion on the issue of espousal and maintainability by not granting any indulgence to the Petitioner in W.P. (C) No. 3962 of 2023 and W.P. (C) No. 4763 of 2023 wherein the issue of maintainability and espousal was raised.*

**VII. TERMINATION BEING IN THE FORM OF PUNISHMENT** *The Respondent herein submits that the WW-2/Respondent No. 2 had categorically in paragraph no. 6 of his Affidavit has stated that the termination was in the form a punishment for alleged act of misconduct vis a vis disobedience of the order of Petitioner to agree to be employed without any wage for a period of 2 years i.e., to perform beggar. The WW-1/Ms. Shalini Sharma, General Secretary of the Union of Petitioner Company also deposed in her affidavit about the punishment being inflicted in the form of termination. In para 3 & 5 of the Evidence Affidavit, the WW1 had categorically mentioned the termination being*



*in the form of punishment i.e., the workmen shall not be paid wages for a period of 2 years, on refusing to accept this proposition, the Petitioner arbitrarily terminated the services of 102/103 employees. The Respondent further submits that the contravention of Section 33(2)(b) can also be establish from the fact that discharge or punishment of a workman by dismissal or otherwise, within the parameters of Section 33(2)(b), there must be a disbursal of wage for one month to the workmen and an application seeking approval the Ld. Tribunal of the action taken by the Management. Since, it is undisputed that both the essential ingredients of 33(2)(b) were not complied with, it is clearly a violation and contravention of Section 33(2)(b) of the Act as well as contravention of Section 25(f) & 25 (g) of the Act. The Hon'ble Supreme Court in Mahendra Singh Dhantwal Vs. Hindustan Motor Limited 1976 4 SCC 606 has held that Section 33(2)(b) makes it obligatory upon the employer to make an application to the tribunal under the proviso only when he discharges or dismisses a workman for misconduct. The misconduct contemplated under Section 33(2)(b) of the Act need not be the one enumerated in the standing order of the company. Even though, a given conduct may not come within the specific terms of misconduct described in the standing order, it may still be misconduct in the special facts of the case.*

*Thus the Respondent No. 2 submits that the present Writ Petition ought to be dismissed with costs."*

## **SUBMISSIONS**

***(on behalf of the petitioner)***

12. Mr. J.P. Cama, learned senior counsel appearing on behalf of the petitioner management submitted that the impugned award is bad in law as the same has been passed without taking into consideration the entire facts and circumstances of the case.



2024:DHC:6001



13. It is submitted that the learned Tribunal erroneously adjudicated the complaint under Section 33A of the ID Act by not taking into consideration the fact that there was a pending dispute i.e. I.D. No. 5/2018 which is at an advanced stage.

14. It is submitted that the complaint under which the impugned award has been passed was only signed and verified by the two persons and therefore, granting relief to 17 persons is illegal and contrary to the law.

15. It is submitted that the complaint made under Section 33A of the ID Act is required to be mandatorily signed, verified, pursued and proved by the complainants and the same would fail if the complaint is not proved by the persons in respect of whom the relief of reinstatement is being sought.

16. It is submitted that a complaint under Section 33 of the ID Act can only be maintainable if the pending dispute falls under the category of the industrial dispute and since the question pertaining to the same is pending before the learned Tribunal, a complaint under Section 33 of the ID Act cannot be held to be maintainable and adjudicated in light of the facts of the instant case.

17. It is further submitted that the learned Tribunal has erroneously held that since the service of respondents who were appointed on fixed term were terminated without complying with the provision of Section 25F and 25G of the ID Act, it amounted to breach of Section 33 of the ID Act.

18. It is also submitted that the termination of a fixed term contract does not qualify as retrenchment under Section 2(oo)(bb) of the ID Act



2024:DHC:6001



and even otherwise, breach of Section 25F and 25G of the ID Act does not amount to contravention of Section 33 of the said Act, as has been wrongly held by the learned Tribunal. The learned Tribunal has failed to appreciate the facts as well as the settled legal principles on the said issues.

19. It is submitted that the finding of the learned Tribunal with regard to termination of fixed term contract of the respondents during pendency of I.D. No. 5/2018 being in contravention of Section 33(2)(b) of the ID Act is legally incorrect as the question of change in condition of service and contravention of Section 33 of the ID Act did not arise, as there was no punitive termination which is a condition precedent for invoking the provisions of Section 33A of the ID Act.

20. Learned senior counsel also submitted that the learned Tribunal failed to abide by the procedure established for adjudication of the complaint under Section 33 of the ID Act and therefore, the impugned award is liable to be set aside.

21. It is submitted that the relief of reinstatement as granted by the learned Tribunal cannot be held to be legally tenable as there is no vacancy of the crew members in the petitioner management.

22. It is submitted that the relief of backwages was granted by the learned Tribunal without it being pleaded in the complaint and the same is in teeth of the settled position of law.

23. It is submitted that the witness namely Ms. Shalini Sharma as examined by the learned Tribunal was not a competent witness to depose



2024:DHC:6001



on behalf of the complainants as she was neither a complainant, nor one of the persons as per the list annexed with the complaint.

24. It is submitted that the learned Tribunal erred in adjudicating the issue of retrenchment as the same was not framed before adjudication of the dispute.

25. Therefore, in view of the foregoing submissions, the learned senior counsel for the petitioner submitted that the present petition may be allowed and the reliefs be granted as prayed.

**(on behalf of the respondents)**

26. Mr. Mahavir Singh, learned senior counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that the same is devoid of any merit as the learned Tribunal has passed a resonated award after taking into consideration the entire facts and circumstances of the case including the settled position of law.

27. It is submitted that Section 33A of the ID Act empowers the workmen to approach the labour Tribunal directly if the employer contravenes the statutory mandate and therefore, referral of the dispute by the Government was not required in filing the application under Section 33A.

28. It is submitted that the conditions prescribed in the above said provision were not complied with by the petitioner management and therefore, the same would amount to violation of the mandate as provided under the said provision.



2024:DHC:6001



29. It is submitted that the interpretation of the term punish was done by the learned Tribunal in right manner as the learned Tribunal referred to various authorities to do the same and therefore, the said interpretation deems to be sound and legally tenable.

30. It is submitted that the termination of employment is one of the harsh punishments inflicted upon the employees and the said punishment has been given by the petitioner management due to the alleged violation of the orders passed by it.

31. It is submitted that the scope and ambit of complaint under Section 33 of the ID Act has been dealt with by the Hon'ble Supreme Court and this Court time and again and therefore, the law with regard to the same is no more *res intergra*.

32. It is submitted that the complainant before the learned Tribunal had categorically stated the endorsement to be on behalf of the 23 aggrieved employees and therefore, the complaint cannot be deemed to be only on behalf of two employees and thus, there is no illegality in the impugned award.

33. It is submitted that the employees of the petitioner management had already agreed to the pay cut due to advent of the COVID-19 pandemic and therefore, the termination cannot be justified due to the said pandemic.

34. Therefore, in view of the foregoing submissions, it is submitted that the present petition may be dismissed.

### **ANALYSIS AND FINDINGS**

**W.P. (C) 1376/2024**

**Page 18 of 69**



2024:DHC:6001



35. The matter was heard at length with arguments advanced by the learned senior counsel on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel for the parties.

36. The petitioner has approached this Court against the impugned award passed by the learned Tribunal in a complaint filed by the respondent under Section 33 of the ID Act. In support of its claim that the impugned award is illegal, the learned senior counsel for the petitioner has submitted that the issue regarding maintainability of the dispute was pending before the Tribunal and therefore, a complaint under Section 33 ought to have not been adjudicated by the learned Tribunal.

37. In rival submissions, the above said contentions were rebutted by the learned senior counsel for the respondents by stating that the petitioner management was in clear violation of the statutory provision meant for protection of the employees in case there is a pending litigation between the employer and the employee and therefore, the impugned award was passed in accordance with the law.

38. Therefore, the question that falls for adjudication before this Court is whether the impugned award passed by the learned Tribunal requires interference under Articles 226/227 of the Constitution of India or not.

39. At this stage, it is apposite to peruse the impugned award, the relevant extracts of which reads as under:



### Issues

1. Whether the complaint filed u/s 33A of the ID Act is maintainable.
2. Whether the cause of the claimants was properly espoused.
3. Whether the employer i.e. the opposite parties during the pendency of a labour dispute changed the service condition of the claimant by terminating their services having knowledge that the workmen are connected with the Industrial dispute pending.
4. To what relief the claimants are entitled to.

On behalf of the claimants the General Secretary of Union Ms. Shalini Sharma testified as WWI and Mr. Mayank Malik testified as WW2. They also proved documents marked as WW1/1 (colly) and WW2/1 (Colly). Similarly, the mgt examined Mrs. Namita Chaudhary, Head, Human Resources, South Asia of Respondent no.1 as MWI. She also proved some documents in a series of MW1/1 to MW1/5 (colly).

The witnesses examined on behalf of the claimants stated that 25 cabin crew whose services were terminated, by authorizing Nayan Pahwa and Mayank Malik, had filed the present application. Out of them 8 including Nayan Pahwa settled the dispute with the mat and currently 17 of them are pursuing the matter. Both the witnesses have stated in clear terras that they are connected with ID no. 05/2018 as that is a proceeding rating to general demand and service condition of the cabin crews. The met had sufficient knowledge about the pendency of that proceeding and connection of the complainants with the said proceeding. Despite that their services were terminated. Ww2 has stated that when the proceeding relating to the charter of demand was pending as ID No. 05/2018 the mgt had called them for a discussion and gave a proposal of salary cut. The cabin crew members agreed for the same and demanded that as a measure of assurance, their contract be extended beyond that period of two years from the date of agreement. The mgt did not accept the same and on the contrary, terminated their service. The witness examined on behalf of the mat has stated that despite the



*pandemic and decline in business, the mgt was maintaining a large contingent of India based flight attendants. The mat took various cost effective measures for it's survival. All these steps were taken after an effective discussion with the representatives of the Lufthansa Cabin Crew Association, which was the recognized union. Several agreements to that effect were executed in the year 2020. But the mgt could not resume flight operation for several reasons causing huge loss in business and thus the cabin crew association was approached for their further cooperation including a major such as continuance of employment without salary for a period of two years. Though an agreement to that effect was signed, the same was not acted upon due to some internal disagreement in the union. However, few crew members proceeded on unpaid leave for two years. Since, the flights were grounded for a long time, the met was left with no option than terminating the service of crew members who were appointed on a fixed term contract. The termination was never for any kind of misconduct but in accordance to the contract of their appointment, as one month salary in lieu of notice along with other contractual dues were paid. Thereby the witness stated that the mgt had never contravened the provisions of section 33 of the ID Art entailing the action under section 33A of the Act.*

### **Findings**

*All the issues being interlinked and inter-dependent have been taken up for consideration together  
At the outset of the argument the Ld. A/R for the mgt no. 1 pointed out that the complaint has been filed alleging contravention of section 33 of the Id Act during the pendency of Id No. 05/2018. But the complaint is not maintainable as the same has been signed and verified by only two persons i.e. Mr. Nayan Pahwa and Mr. Mayank Malik and the remaining complainants have not signed or verified the complaint petition. Furthermore, Nayan Pahwa did not enter the witness box as he settled his dispute with the Respondent*



no. 1 during the pendency of this proceeding. The other complainants, whose names find place in annexure A to the complaint petition, did not choose to testify as witnesses. He also argued that the complaint under section 33A of the ID Act is akin to a dispute raised under section 24 of the ID Act. Since the procedure of CPC is followed in these types of proceedings the complaint petitions ought to have been signed and verified by all the complainants. To support his stand he placed reliance in the case of **Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. & Anr, 1979(3) SCC 371**. While pointing out to the record of this proceeding, he submitted that no authority letter was executed in favour of Mayank Malik and Nayan Pahwa on the date of filing of the complaint on 25.02.2021. As a damage repairing measure, the authority letter executed in favour of Mayank Malik and Nayan Pahwa on 28.11.2021, was filed followed by another authority letter in form F dated 03.12.2021. All these documents are liable to be rejected and the complaint by two persons on behalf of 23 others cannot be entertained. The submission of the Ld. A/R has made it expedient to examine if the complaint need to be filed/signed by the individual complainants.

In the case of Shankar Chakravarti, the Hon'ble Supreme Court have observed that Rule 60 of the industrial Disputes (Central) Rules 1957 prescribes the procedure as to how the application under section 33 is to be made. According to this rule the application has to be filed in form J or K as the case may be, and need to be a verified application. But the said observation of the Hon'ble Supreme Court is not with regard to the application filed under section 33A by the workmen which is different in nature from the application filed under section 33. No doubt as per rule 60 an employer intending to obtain express permission in writing of the Conciliation Officer, Labour Court or Tribunal under sub-section (1) or sub-section (3) of section 33 shall present an application in form J or K in triplicate.



*But no such rule has been prescribed for the workmen filing application under section 33A of the Act alleging violation of Section 33 of the Act. In this proceeding, the claimants have filed authority letter executed by the individual workmen in favour of the applicants Mayank Malik and Nayan Pahwa and each of them have handed over the relevant documents like their appointment letter to the same authorized persons. In the complaint petition, the authorized persons have clearly mentioned that the claim is filed on behalf of themselves and 23 other cabin crew listed in annexure A. In addition to that the claimants have filed the authorization in favour of their representatives and the advocates in form F prescribed under the Rule. Hence, in absence of any clear rule or procedure for filing the application under section 33A individually by the aggrieved persons, this Tribunal finds no reason of rejecting the authority letter in form F and the joint complaint application filed by the authorized persons.*

*Strenuous argument was advanced by the Ld. A/R for the mgt no. 1 stating that the Id no. 05/2018 is admittedly pending before this Tribunal and it is in respect of the general demands of the Cabin Crew Association. But in that proceeding issues have been framed and one of the issues is about maintainability of the said proceeding. The maintainability has been challenged for want of valid espousal. Unless and until that proceeding is decided and held to be an Industrial Dispute, the applicants of this proceeding cannot take the advantage of section 33A of the ID Act alleging contravention of section 33 of the Act. He also argued that the complaint has been filed alleging termination of employment during pendency of ID no. 05/2018 and in view of the same the employer is required to seek permission or approval before terminating the service. But unless and until that there is a positive finding by the Tribunal the pending dispute is an Industrial Dispute, no cognizance can be taken on the present complaint filed under section 33A of the ID Act. He also pointed out that in*



*the complaint petition filed, the complainants have not alleged that the termination of fixed term employment contract was punitive in nature. Unless it is so pointed out the provisions of section 33A for violation of section 33(2)(b) cannot be raised. To support his submission he placed reliance in the case of **Syndicate Bank Ltd. Ve. K. Ramnath V. Bhat 1968(1) SCR 327** decided by the Hon'ble Supreme Court and in the case of **Gowrishanker Oil Mills Va. Industrial Tribunal & Others, 1961 SCC Online KAR 197**. Basing on these judgments, he argued that as observed by the Hon'ble Apex Court in syndicate bank case this Tribunal can take cognizance of the complaint only when there is a positive finding that the pending dispute is an industrial dispute and not otherwise. He also pointed out that before a complaint under section 33A against the employer is entertained, the workman must show that the employer has contravened the provisions of section 33 of the ID Act during the pendency of this proceeding. In this case, the termination of service not being punitive in nature, but for the administrative reason of the mgt and the applicants being in fixed term employment and the terms of employment was complied properly provision of section 33A is not invocable.*

*The Ld. A/R for the claimant in his reply submitted that the facts of syndicate bank case (supra) is distinguishable from the facts of the present case. He pointed out to the pleadings of the met and submitted that the mat has admitted that the ID No. 05/2018 is in respect of the general demands relating to the service condition of the cabin crew raised by their Association, Hence, there is no controversy that the complainants of this proceeding are directly connected with the proceeding pending as ID 05/2018*

*On a careful perusal of the judgment of syndicate bank it is noticed that in that, case the contention of the Appellant mgt was that no industrial dispute was pending when the order of dismissal was passed. Hence, the question of contravention of section 33 of the Act never arose*



*entitling the claimants to file the complaint under section 33A of the Act. After examining the documents and evidence, the Hon'ble Supreme court in the case of syndicate hank concluded that the Id no. 04/1964 was pending from 08.01.1964 to 08.10.1964 and the order of the Managing Director dismissing the Respondent from service was made on 12.11.1963, which date, admittedly, falls outside the duration of the pendency of ID No. 04/1964.*

*The judgment of Syndicate Bank being distinguishable on facts, In this case, it is concluded that ID No. 05/2018 is a proceeding in which the complainants are connected with since the same is a proceeding relating to the general demand of the cabin crew of management no. 1.*

*Now, it is necessary to examine if the termination of service of the claimants is in contravention of section 33(2(b) of the ID Act. The Ld. A/R for the mgt argued that contravention of section 33(2(b) occurs when a person is discharged or dismissed for any misconduct not connected with the dispute pending and without complying the mandatory provisions laid there under. In this case, admittedly, the complainants fixed term contracts were terminated for operational reason of the Air Line. The said termination was never a punitive action for any misconduct of the complainants. Hence, the applicants are not permitted to invoke the provisions of section 33A of the ID Act. He also pointed out that in the claim petition the applicants have not whispered a word alleging the punitive action taken against them. While filing the rejoinder, though they have explained that for refusal to accept the proposal of the mat to go on leave for two years without pay the mgt out of vindication, terminated their services. But this statement, in the rejoinder cannot take the place of pleading and there being no pleading about dismissal as a mode of punishment the same should not be accepted to invoke the provisions of section 33 A of the Act. He also stated that the termination simplicitor of fixed tem employment contract which is an exception to the definition of retrenchment as defined in section 2(oo)*



(bb) of the ID Act, does not amount to contravention of section 33A. He placed reliance in the case of **Birla VXL Limited Vs. State of Punjab & Others, 1998 LLR 1167 (para7)** and **Blue Star Employees Union Vs. Ex-OFF Private Secretary Government, 2008 SCC page 94.**

The Ld. A/R for the complainants counter argued that the Hon'ble High Court of Delhi, in the recent Judgment delivered by the Division Bench in the case of Management of National Highways Authority of India Vs. Vinita reported in 2021 ICLR page 61 have Inter-alia held that:

- i. For a case to be brought under Section 2(00)(bb), employer has to plead and prove that the work for which Workmen was engaged was not of a permanent nature but need arose due to some contingency and for a short period and that ended after a period or shortly thereafter.
- ii. However, Section 2(oo)(bb) cannot be read in isolation. Under definition of Workmen under Section 2(s) word permanent is not used. Thus, any one hired to do work is qualified to be a Workmen.
- iii. Factual findings of COIT not challenged by parties that Respondent continued to work for Appellant even after expiry of contract till her termination.
- iv. Hence compliance under Section 25 and 25G was required as Respondent is not covered under Section 2(00)(bb).

He, thereby, argued that when the complainants had worked for a long period varying from 14 to 15 years and had completed 240 days of work in the preceding calendar year, the stand of the mgt that provisions of section 25F and 250 were not complied nor any seniority list was displayed before termination for their fixed term contract is not tenable. In the said judgment of National Highway Authority, the Hon'ble High Court of Delhi have clearly held that for compliance of the provisions of section 25F and 250 there is no distinction between a permanent employee and the temporary employee and termination of service without



*complying with the provisions section 25P of the ID Act is illegal.*

*In this case the witness examined on behalf of the mat admitted in clear terms that the provisions of section 25F, 250 were not complied. In the care of **M. Venu Gopal vs. L.LC of India (1994) 1LLJ 597** the Hon'ble Supreme Court have held that the definition of retrenchment being very wide and comprehensive in nature, shall cover, within it's ambit, termination of service in any manner and for any reason otherwise than as a punishment inflicted by way of disciplinary action. On a careful reading of the decisions referred supra, It is concluded that the termination of the service of the complainants amounts to retrenchment defined under section 2(oo) of the ID Act and doesn't fall under the exception of section 2 (oo)(bb) of the said Act. It is the admitted position that the provisions of section 25F and 250 were not complied by the mgt before such termination.*

*The Ld. A/R for the mgt further argued that the provisions of section 33 (2(b) can be held as contravened only when the alleged termination is being done as a mode of punishment. The complainants of this proceeding were not punished for any misconduct and the action of termination was never punitive. His other limb of argument is that this fact was never pleaded in the complaint petition and the rejoinder is not a pleading. To fortify his argument be placed reliance in the case of **Amarjeet Singh vs. Smt. Bhagwati Devi, FAO 134/1979** decided by the Hon'ble High Court of Delhi wherein it has been held that under order VI Rule 1 of CPC pleading means plaint or written statement and the replication is not a pleading for claiming relief and the decision of a case cannot be based on grounds outside the pleadings of the parties. He thereby submitted that whatever has been raised for the first time by the complainant in the rejoinder cannot be entertained and cannot form basis of the award. But this argument of the Ld. A/R for the mgt does not sotind convincing since in the case of **M.L. Gupta vs. Kripal Singh (98(2002) DLT 683)** the Hon'ble High Court of Delhi*



*have held that replication cannot be filed by the plaintiff except by way of defence to set off as a matter of right. But with the leave of the court can be presented. Once the court required a party to file the replication, the said replication will become part of the pleading. Hence in this case when filing, of rejoinder was allowed without any objection from the mat the same is accepted as the pleading of the complainants wherein they have pleaded about the punishment inflicted on them by the mgt by terminating their service, since they refused the offer of the mgt to proceed on a two year unpaid leave and the said termination amounts to retrenchment.*

*The Ld. A/R for the claimants advanced the argument that the Industrial Dispute Act does not define the word punish or punishment. In Black's Zaw dictionary the word 'punish' has been given a meaning a sanction-such as a fine, penalty, confinement or loss of property, right or privilege assessed against a person who has violated the law. The mgt witness Ms. Namita Chaudhry has admitted during cross examination that the complainants were offered to remain under the employment of the mat but to proceed with unpaid leave for a period of two years in view of the slow down of the business. The witness during cross examination also admitted that the complainants did not accept the proposal and on account of disobedience their service was terminated. This clearly shows that the termination of service was a punitive action taken against the complainant. The misconduct referred to in section 33(1)(b) or section 33 (2)(b) need not necessarily be a misconduct flowing out of an act of the workmen. If the action is followed by any direction not accepted by the employee, the same amounts to punishment.*

*The provisions of section of 33(2)(b) unambiguously mandatory In nature. It has been clearly provided under section 33(2)(s) and 33(2)(b) that during the pendency of an Industrial Dispute, the employer can alter the service condition of the employee in regard to any matter not*



*connected with the dispute or for any misconduct not connected with the dispute discharge or punish provided that no such workman shall be discharged or dismissed unless he has been paid wage 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. In the case of **Mahendra Singh Dhantwal Vs. Hindustan Motor Ltd., (1976) 4 SCC 606** the Hon'ble Supreme Court have held that section 33(2)(6) makes it obligatory upon the employer to make an application to the Tribunal under the proviso only when he discharges or dismisses a workman for misconduct. The misconduct contemplated under section 33(2)(b) of the Act need not be the one enumerated in the standing order of the company. Even though, a given conduct may not come within the specific terms of misconduct described in the standing order, it may still be a misconduct in the special facts of the case. Hence in this case the refusal by the complainants to accept the conditions offered by the mat which was definitely damaging to their interest was taken as a misconduct by the employer and consequently their services were terminated.*

*The provisions of section 33(2)(b) provides that for discharging or punishing a workman whether by dismissal or otherwise during the pendency of the industrial dispute, the met is required to act simultaneously by paying wage for one month and making an application seeking approval of the Tribunal of the action taken. In this case admittedly no application for approval has been filed by the mgt. On behalf of the workman argument was advanced that all the claimants were working for the mgt. for a long period ranging from 14 to 15 years and the mgt witness had admitted that the provisions of section 250 and 250 were not complied as they were under the fixed term employment. He argued that provision of section 25f and 25G are mandatorily to be complied before termination of the employment and there is no distinction between a perasament employee and temporary employee in this regard. Thus, from*



*the evidence on record it is again proved that the provisions of section 25 and G not complied and the order of termination was passed in contravention of the provisions of section 33(2(b) of the ID Act.*

*In the case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018 (decided on 10/05/2018, the Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-***

*“The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural Justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the suffer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.”*

*A Similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018.***

*The constitution Bench of the Hon'ble supreme court in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Shri Ram Gopal Sharm and Ors., 2002 CLR, 789** have held that a termination of service of employee effect-non grant of approval under section 33(2(b) is that the order of dismissal becomes ineffective from the date it was passed*



*and therefore the employee becomes entitled to wage from the date of dismissal to the date disapproval of the application and no specific order for reinstatement would be necessary. In such a situation it will be deemed that the order or 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.”*

*In this case the mgt is guilty of contravening the provisions of section 33(2)(b) of the ID Act and for not complying the provisions of section 25 and 250 of the ID Act which makes the order dated 02.02.2021 termusing the services of the claimants as per the list enclosed illegal.*

*Having regard to the legal positing as discussed above it is held that the applicants herein (as per the list enclosed) are entitled to reinstatement into service in the same position as they were on the date of termination with fall back wages in as much as the termination of the applicants is per-se illegal and the mat has not led any evidence to show that they have been gainfully employed during the intervening period after their termination. All the issues are accordingly answered in favour of the workmen. Hence ordered.*

### **Order**

*The Complaint filed by the claimants (List enclosed) is allowed. It is held that the Mgt no. 1 during the pendency of Id No. 05/2018, acted illegally in terminating the services of the claimants without seeking approval of this Tribunal and without complying the provisions of Section 25F & 25G of the ID Act. The action of the mat no. 1 is in complete violation of the provisions of Section 33(2)(b) of the ID Act. The claimants are held entitled to reinstatement with full back wages and continuity of service from the date of termination of service. The Mgt no. 1 is further directed to reinstate the complaints forthwith and pay them their last drawn salary and the arrears within 2 months from the date of publication of the award without interest, failing which*



*the amount accrued shall carry interest @ 6% per annum from the date of the challenged dismissal and till the amount are finally paid. The list of the claimants is attached herewith as annexure-A:-*

**ANNEXURE.: "A"**

| <b><i>SR.<br/>No.</i></b> | <b><i><u>Name of the claimants</u></i></b> |
|---------------------------|--------------------------------------------|
| <i>1</i>                  | <i>Mayank Malik</i>                        |
| <i>2</i>                  | <i>Jatin Mishra</i>                        |
| <i>3</i>                  | <i>Pallavi Shandilya</i>                   |
| <i>4</i>                  | <i>Bhavatharani Shivkumar</i>              |
| <i>5</i>                  | <i>Joanne Fonseca</i>                      |
| <i>6</i>                  | <i>Preeti Kadam</i>                        |
| <i>7</i>                  | <i>Leena Singh</i>                         |
| <i>8</i>                  | <i>Debashis Rasaily</i>                    |
| <i>9</i>                  | <i>Sameera Kalsi</i>                       |
| <i>10</i>                 | <i>Radhika Puri</i>                        |
| <i>11</i>                 | <i>Swati Singh</i>                         |
| <i>12</i>                 | <i>Nilesh D'sa</i>                         |
| <i>13</i>                 | <i>Neha Luthra</i>                         |
| <i>14</i>                 | <i>Gautam Dhawan</i>                       |
| <i>15</i>                 | <i>Snehal Gaikwad</i>                      |
| <i>16</i>                 | <i>Roopam Bhatti</i>                       |
| <i>17</i>                 | <i>Simantini Mina</i>                      |

40. Upon perusal of the aforesaid extracts of the impugned award, it is made out that the learned Tribunal dealt with the contentions of both the parties and held the termination of the workmen as illegal in view of the bar imposed by Section 33 of the ID Act.

41. The relevant extracts of the impugned award make it evident that the learned Tribunal had adjudicated the issue of maintainability of the complaint by relying upon the testimony of one of the employees and



held the complaint to be maintainable as the rest of the employees were stated to give their consent to the complainant to file the same on their behalf as well.

42. On issue of termination of services, the learned Tribunal held that the laying off of the workmen would amount to termination as the same was done only after refusal of the proposal of the petitioner management and therefore, the same would amount to punishment.

43. The impugned award also states about the failure on part of the petitioner to comply with the Section 25F of the ID Act, and therefore, termed the termination as retrenchment as the petitioner had failed to comply with the said provision.

44. Therefore, in view of the abovesaid, the learned Tribunal held the issues in favor of the workmen and therefore, directed reinstatement of the said workmen.

45. Now advertent to the case at hand, in order to adjudicate the instant petition, this Court deems it fit to frame the following issues:

- i. Whether the learned Tribunal was right in adjudicating the complaint under Section 33 and Section 33 A of the ID Act?*
- ii. Whether the complaint made under Section 33A of the ID Act ought to be signed and verified by all parties?*
- iii. Whether the learned Tribunal was right in concluding that there was a contravention of Section 25G and 25F of the ID Act?*



**Issue no. i - Whether the learned Tribunal was right in adjudicating the complaint under Section 33 and Section 33 A of the ID Act?**

46. Section 33 and Section 33A of the Industrial Disputes Act, 1947 prohibits employers to undertake certain actions during the continuation of a dispute. Section 33(2)(b) of the ID Act requires that during pendency of an industrial dispute, the employer can discharge or punish, whether by dismissal or otherwise, a workman for any misconduct not connected with such dispute, provided an application for approval has been filed by the employer before the concerned authority. The said provisions are reproduced herein:

*“Section 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].”*

33A. *Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—Where an employer contravenes the provisions of section 33 during the pendency of proceedings [before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention, may make a complaint in writing, [in the prescribed manner,—*

(a) *to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and*

(b) *to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case*



*may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.]*

47. The petitioner herein has taken two-fold objections regarding the applicability of Section 33 of the ID Act by the learned Tribunal. *Firstly*, it has been stated that the complaint made by the workmen ought not to have been entertained by the learned Tribunal as there exists an issue regarding maintainability of the industrial dispute in another dispute bearing I.D. 05 of 2018 which has not been decided. *Secondly*, that the service of respondents were not terminated because of the misconduct, but was a simpliciter termination of a fixed term contract which is outside the purview of Section 33 and 33A of the ID Act. The relevant paragraph of the pleading is reproduced hereinbelow :

*"C. BECAUSE the Learned Tribunal failed to appreciate that the proceedings under Section 33A of the ID Act could not be decided during pendency of I.D. No. 05 of 2018 as the same would result in serious anamoly because if the present complaint which was filed by the Respondent Claimant on the basis of pending I.D. 05 of 2018 is held to be not an industrial dispute which is yet to be decided, in that case the Impugned Award passed or the execution of a process initiated by the Respondent would create a serious legal complicity and would defeat the very process of provisions applicable. In view of the same, the Impugned Award is unsustainable in law and liable to be set aside.*

*K. BECAUSE the Learned Tribunal failed to appreciate that the Respondents as well as their Union had initially agreed to go an unpaid leave for two (2) years vide settlement dated*



2024:DHC:6001



*23.12.2020; however, subsequently settlement because of which the Petitioner was constrained to terminate their service. It is submitted that in light of these facts it cannot be concluded that the service of Respondents were terminated because of misconduct. In fact, it was a termination simpliciter of a fixed term contract which is outside the purview of Section 33/33A of the ID Act.”*

48. The settlement of an industrial dispute between the employer and the employee, by way of adjudication, is provided under the ID Act. On plain reading of the relevant provision of the ID Act, it becomes clear that there already is a provision under Section 10 of the ID Act which makes it statutory obligation to a workman to approach the ‘appropriate government’ in case of any dispute between the employer and the workman for seeking its opinion whether an industrial dispute exists or is apprehended, and if the ‘appropriate government’ is of the opinion that any industrial dispute exists or apprehended, it may refer the same to the ‘Board of Conciliation’, Courts or Tribunals for adjudication.

49. In the case of *Shambu Nath Goyal v. Bank of Baroda, Jullundur*<sup>1</sup> it was held by the Hon’ble Supreme Court that while making a reference under section 10(1) of the ID Act, the appropriate government performs an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute is a preliminary step in discharging its function. The relevant portion of the said judgment is as under:

---

<sup>1</sup>(1978) 2 SCR 793



*“4. Section 2(k) defines industrial dispute as under : ‘industrial dispute’ means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person;”*

*5. A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non, unless of course in the case of public utility service, because Section 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are “dispute” or “difference”. What is the connotation of these two words? In *Beetham v. Trinidad Cement Ltd.* [(1960) 1 All ER 274, 279 : 1960 AC 132] Lord Denning while examining the definition of expression “Trade dispute” in Section 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:*

*“By definition a ‘trade dispute’ exists whenever a ‘difference’ exists; and a difference can exist long before the parties became locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening.”*



6. Thus the term “industrial dispute” connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.

7. The reference in the case before us was made under Section 10(1) which provides inter alia that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended it may at any time by order in writing refer the matter for adjudication as therein mentioned. The power conferred by Section 10(1) on the Government to refer the dispute can be exercised not only where an industrial dispute exists but when it is also apprehended. From the material placed before the Government, Government reaches an administrative decision whether there exists an industrial dispute or an industrial dispute is apprehended and in either event it can exercise its power under Section 10(1). But in making a reference under Section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. The Court cannot therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination. No doubt it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute



*within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because in its opinion there was no material before the Government on which it could have come to an affirmative conclusion of those matters, (vide Madras State v. C.P. Sarthy [(1952) 2 SCC 606 : AIR 1953 SC 53 : 1953 SCR 334 : (1953) 1 Lab LJ 174] ). The Tribunal, however, referred to the decision of this Court in Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal [AIR 1968 SC 529 : (1968) 1 SCR 515 : (1968) 1 Lab LJ 834] in which this Court proceeded to ascertain whether there was in existence an industrial dispute at the date of reference, but the question whether in case of an apprehended dispute Government can make reference under Section 10(1) was not examined. But that apart the question whether an industrial dispute exists at the date of reference is a question of fact to be determined on the material placed before the Tribunal with the cautions enunciated in C.P. Sarthy case. In the case before us, it can be shown from the record accepted by the Tribunal itself that there was in existence a dispute which was legitimately referred by the Government to the Industrial Tribunal for adjudication. Undoubtedly, it is for the Government to be satisfied about existence of the dispute and the Government does appear to be satisfied. However, it would be open to the party impugning the reference (to contend) that there was no material before the Government, and it would be open to the Tribunal to examine the question, but that does not mean that it can sit in appeal over the decision of the Government and come to a conclusion that there was no material before the Government.”*



50. The Hon'ble Supreme Court in *Ram Avtar Sharma v. State of Haryana*,<sup>2</sup> held that Section 10 of the ID Act requires the appropriate government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate government to determine *prima facie* whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. The relevant part of the said judgment is reproduced herein:

*“7. Now if the Government performs an administrative act while either making or refusing to make a reference under Section 10(1), it cannot delve into the merits of the dispute and take upon itself the determination of lis. That would certainly be in excess of the power conferred by Section 10. Section 10 requires the appropriate Government to be satisfied that an industrial dispute exists or is apprehended. This may permit the appropriate Government to determine prima facie whether an industrial dispute exists or the claim is frivolous or bogus or put forth for extraneous and irrelevant reasons not for justice or industrial peace and harmony. Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on the irrelevant, extraneous or grounds not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review. In State of Bombay v. K.P. Krishnan [AIR 1960 SC 1223 : (1961) 1 SCR 227, 243 : (1960) 2 LLJ 592 : 19 FJR 61] it was held that a writ of mandamus would lie against the Government if the order passed by it under Section 10(1) is based or induced by reasons as given by the Government are extraneous, irrelevant and not germane to the determination. In such a situation the Court would be*

---

<sup>2</sup>(1985) 3 SCC 189



*justified in issuing a writ of mandamus even in respect of an administrative order. Maybe, the Court may not issue writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter. This legal position appears to be beyond the pale of controversy.”*

51. Thus, it is made out that after reference by the appropriate Government, a dispute is established as a *prima facie* industrial dispute. In the instant case, conciliation proceedings were initiated before the Labour Commissioner and after several rounds of discussions, the conciliation failed, and hence, the appropriate government referred the matter to the learned Tribunal by order dated 22<sup>nd</sup> January, 2018 for adjudication in terms of the reference.

52. It is a well settled position of law that the referral of a dispute to the Tribunal by the appropriate Government would mean that the said dispute *prima facie* satisfies the ingredients of being an industrial dispute.

53. The said proposition has been reiterated by the Hon'ble Supreme Court and this Court time and again and therefore, the issue remains settled with this regard. In the instant case, even though the learned Tribunal had formed the preliminary issue of maintainability of the dispute, the said dispute was referred by the Government on being *prima facie* satisfied about the nature of the dispute.



54. The petitioner relied upon the judgment in *Syndicate Bank Ltd. v. K. Ramanath V. Bhat*<sup>3</sup> to allege that the learned Tribunal should have waited to initiate any proceedings till there is a positive finding that the pending dispute is an industrial dispute.

55. However, it is hard to agree with this position as the judgment takes into consideration whether a dismissal order passed before the dispute was brought before the adjudicating authority comes under the scope of Section 33 of the ID Act or not. The relevant paragraphs are reproduced hereinbelow:

*“15. There is no controversy, in this case, that the appellant did not seek the approval of the Industrial Tribunal concerned, nor did they offer or pay one month's wages to the respondent. There is also no controversy that I.D. No. 4 of 1964, can in law be considered to be pending only from January 8, 1964, to October 8, 1964. The order of the Managing Director, dismissing the respondent from service, was made on November 12, 1963, which date, admittedly, falls outside the duration of the pendency of I.D. No. 4 of 1964. The order of the working committee of Directors, rejecting the respondent's appeal, which was passed on March 20, 1964, certainly falls within the period when I.D. No. 4 of 1964 was pending. Therefore, the question that arises for consideration, in this case, is as to when, it can be stated, that the respondent was dismissed i.e. by the order of November 12, 1963, of the Managing Director, or by the appellate order of March 20, 1964, passed by the working committee of Directors. According to the appellant, the order which has to be taken into account, for considering whether there is a contravention of Section 33 of the Act, is the original order passed, by the Managing Director, on*

---

<sup>3</sup>(1968) 1 SCR 327



November 12, 1963, whereas, according to the respondent, the appellate order, passed on March 20, 1964, is the effective order, dismissing him.

16. The respondent's contention, in this regard, is briefly as follows. Under the National Industrial Tribunal (Bank Disputes) Award, 1962 (known as the Desai Award), a workman, in such cases, has got a right of appeal, to the appropriate authority, and he has got a period of 45 days, for filing the appeal. In this case, the order of the Managing Director, dated November 12, 1963, also states that respondent is entitled to file an appeal, against that order, to the working committee of the Directors, within 45 days of receipt of that order. The respondent, admittedly, filed an appeal, on December 17, 1963, well within the time. The appeal was disposed of on March 20, 1964. The language of Section 33(2), counsel points out, is to the effect that the employer has been enabled to take action, 'in accordance with the standing orders applicable to a workman concerned, in such dispute'. Inasmuch as the standing orders, in this case, give a right to appeal, to the workman, any order that is passed, by the management, in respect of which a right of appeal is given to a workman, cannot be considered to be an effective or operative order, till the appellate decision is made known. It will be open to the appellant to take action, in accordance with the proviso to Section 33(2)(b), at the time when the appellate order was passed on March 20, 1964, as the appellate order is the effective and binding order. So far as the parties are concerned, the order of dismissal in this case, must be considered to have been passed only on March 20, 1964, which date squarely falls within the period, during which I.D. No. 4 of 1964, was pending. We are not inclined to accept the contentions of the learned counsel, for the respondent, in this regard.

17. It has been laid down by this Court, in *Strawboard Manufacturing Co. v. Govind* in construing the proviso to



*Section 33(2) (b) of the Act, that the three things contemplated viz. dismissal or discharge, payment of the wages and making of the application, should be part of the same transaction. Therefore, in our view, there must be a fixed and certain point of time which will be applicable to all managements and workmen, when construing the provisions of Section 33 of the Act. The management must definitely know, as to when they have to take the necessary action, under the proviso to Section 33(2) (b), and the workman also should, likewise, know the definite time when the management should have complied with the requirements of the proviso to Section 33(2)(b), so that he could approach the Industrial Tribunal, by way of a complaint, under Section 33-A, of the Act. A reading of the material provisions of Section 33 shows that the expressions used are 'discharge or punish, whether by dismissal or otherwise', and they clearly indicate, in our opinion, the point of time, when the order of discharge or dismissal is passed, by the authority concerned. An order of discharge or dismissal, in our opinion, can be passed, only once; and, in this case, the order of dismissal is the one passed, by the Managing Director, on November 12, 1963. No doubt, either by virtue of the Standing Orders, or by virtue of a contract of service, a right of appeal may be given to a workman concerned, to challenge an order of dismissal. But the Appellate Authority only considers whether the order of dismissal has to be sustained, or whether it requires modification. Therefore, there is no question of the Appellate Authority passing, again, an order of dismissal. We are not concerned, in construing the provisions of Section 33, as to the finality of the orders passed, by the authority concerned, in the first instance, in passing orders of dismissal or discharge. Further, the proviso to Section 33(2)(b), when it refers to payment of wages for one month, also indicates that it relates to an order of discharge or dismissal, which comes into effect immediately, which, in this case, is the order passed, on November 12, 1963. The payment of one month's salary or*



*wages, is to soften the rigour of unemployment that will face the workman, against whom an order of discharge or dismissal, has been passed. If the management has to wait for the minimum period prescribed for filing an appeal, and also await the termination of the appeal when one is filed, considerable time would have lapsed from the date of the original order during which period the workman would not have received any salary. It will be anomalous to hold that even after the lapse of such a long time, the payment of one month's salary would satisfy the requirements of the section."*

56. This Court finds no merit in submission of petitioner that the award passed by the learned Tribunal is in contravention of *Syndicate Bank (supra)*, as the factual matrix and question of law are not applicable to the case at hand.

57. The Hon'ble Supreme Court in *Punjab Beverages (P) Ltd. v. Suresh Chand*<sup>44</sup>, defined the scope of Section 33 of the ID Act, stating that the object of the legislature in enacting such provision appears to be to protect the workman concerned in the dispute which forms the subject-matter of pending conciliation or adjudication proceedings, against victimisation by the employer on account of his having raised the industrial dispute or his continuing the pending proceedings and to ensure that the pending proceedings are brought to an expeditious termination in a peaceful atmosphere, undisturbed by any subsequent cause tending to further exacerbate the already strained relations between the employer and the workmen.

---

<sup>44</sup> (1978) 2 SCC 144



2024:DHC:6001



58. In the above said judgment, it was also held by the Hon'ble Supreme Court that the said provision also recognises that occasions may arise when the employer may be justified in discharging or punishing by dismissing his employee and so, it allows the employer to take such action, subject to the condition that in the one case before doing so, he must obtain the express permission in writing of the Tribunal before which the proceeding is pending and in the other, he must immediately apply to the Tribunal for approval of the action taken by him.

59. Thus, when a dispute is *prima facie* held to be industrial dispute, merely raising the issue on maintainability in the preliminary proceedings would not exclude application of Section 33 and Section 33A of the ID Act where the workmen related to primary earlier industrial dispute are discharged or dismissed. This would defeat the very purpose of enacting Section 33 of the ID Act which aims for expeditious and harmonious resolution of industrial disputes.

60. With regards to second contention that the service of the respondents were terminated not because of the misconduct, but was a termination simpliciter of a fixed term contract which is outside the purview of Section 33 and 33A of the ID Act, this Court has taken note of the learned Tribunal's finding that the management terminated workmen due to their disobedience of settlement of 2 year unpaid leave. The extracts of the observations made by the learned Tribunal reads as under:

*“Ms. Namita Chaudhry has admitted during cross examination that the complainants were offered to remain under the employment of the mgt but to proceed with unpaid leave for a period of two years in view of the slow down of*



*the business. The witness during cross-examination also admitted that the complainant did not accept the proposal and on account of disobedience their service was terminated. This clearly shows that the termination of service was a punitive action taken against the complainant. The misconduct referred to in section 33(1)(b) or section 33 (2)(b) need not necessarily be a misconduct flowing out of an act of the workmen. If the action is followed by any direction not accepted by the employee, the same amounts to punishment.”*

61. Upon perusal, it is crystal clear that the learned Tribunal had rightly held the said termination to be in non-compliance with the statutory mandate as the petitioner had terminated the services of the workmen and same amounts to punitive action under Section 33 of the ID Act.

62. As per Section 33(3) of the ID Act, when a dispute is pending for adjudication, such discharge or dismissal can only be taken after approval from the Tribunal which was not complied with in this case. In this regard, the Hon’ble Supreme Court’s judgment in ***P. D. Sharma vs State Bank Of India***<sup>5</sup> is relevant wherein the scope of Section 33(2) vis-à-vis the scope of Section 33(3) of the ID Act was discussed. The relevant part of the said judgment is reproduced hereinbelow:

*“10. One common condition precedent for an application to be made under both those provisions is the pendency of any conciliation proceedings before a conciliation officer or a board or any proceeding before an arbitrator or a labour court or a tribunal or National Tribunal in respect of an industrial dispute. That apart the two provisions deal with*

---

<sup>5</sup> 1968 AIR 985



*different situations. Sub-section 2 of Section 33 concerns itself with actions that may be taken by an employer against his employees in respect of matters not connected with the industrial dispute. In those cases though the employer can take any of the actions mentioned in that provision in accordance with the standing orders or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workmen, on his own authority, he must, in the case of discharging or punishing whether by dismissal or otherwise, a workman, pay him wages for one month and must also make an application to the authority before which the industrial dispute is pending for approval of the action taken by him. Sub-section 3 of Section 33 deals with "protected workman" which expression in relation to an establishment means a workman who being an officer of a registered trade union connected with the establishment, is recognized as such in accordance with the rules made in that behalf. If the employer wants to take any action prejudicial to a protected workman concerned in an industrial dispute pending before one of the authorities mentioned earlier he can do so only with the "express permission in writing of the authority before which the proceeding is pending". On a comparison of sub-sections (2) & (3) of Section 33 it will be seen that the scope of the two provisions are wholly different. Taking the case of a worker's discharge or punishment by dismissal or otherwise in the former the previous permission of the authority before which the industrial dispute is pending is necessary but under the latter only a subsequent approval from a competent authority is needed. Though the application under that provision should be made to the authority before which the industrial dispute is pending the approval to be obtained need not be from that authority. Once approval is given it goes back to the date on which the order in question was made. If the approval asked for is not accorded then the action taken by the employer becomes ab initio void and the employee will continue in service and his*



*conditions of service will also continue without any break as if the order in question had not been made at all. Hence we are unable to accept the contention of Mr Sen that the decision of this Court in Tata Iron and Steel Company case [(1965) 3 SCR 411] has any bearing on the question to be decided in this case.*

*11. The purpose of those two sub-sections are wholly different. This will be further clear if we refer to the history of Section 33. That section, since its incorporation in the Act in 1947, has undergone several legislative changes. As it stood originally it read*

*“No employer shall during the pendency of any conciliation proceeding or proceedings before a tribunal in respect of any industrial 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, nor save with the express permission in writing of the conciliation officer, board or tribunal, as the case may be shall he during the pendency of such proceedings, discharge, dismiss, or otherwise punish any such workmen, except for misconduct not connected with the dispute.”*

*The section was amended by Act 48 of 1950. The amended section read:*

*“During the pendency of any conciliation proceedings or proceedings before a tribunal in respect of any industrial dispute, no employer shall (a) alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; (b) discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute;*

*save with the express permission in writing of the conciliation officer, board or tribunal, as the case may be.”*

*The amended section dropped the exception made in respect of misconduct not connected with the dispute. This change in the law prevented the employers from discharging or*



*punishing their employees even in respect of a misconduct not connected with the industrial dispute. That was a serious inroad into the disciplinary jurisdiction of the employer. It is possibly with a view to avoid unnecessary interference with the rights of the employers the section was amended by Act 36 of 1956.*

*12. In **Strawboard Manufacturing Co. v. Govind** [(1962) Supp 3 SCR 618, 623] this Court observed: “The plain object of the section was to maintain the status quo as far as possible during the pendency of any industrial dispute before a tribunal. But it seems to have been felt that Section 33, as it stood before the amendment of 1956, was too stringent for it completely took away the right of the employer to make any alteration in the conditions of service or to make any order of discharge or dismissal without making any distinction as to whether such alteration or such an order of discharge or dismissal was in any manner connected with the dispute pending before an industrial authority. It seems to have been felt therefore that the stringency of the provision should be softened and the employer should be permitted to make changes in conditions of service etc. which were not connected with the dispute pending before an Industrial Tribunal. For the same reason it was felt that the authority of the employer to dismiss or discharge a workman should not be completely taken away where the dismissal or discharge was dependent on the matters unconnected with the dispute pending before any tribunal. At the same time it seems to have been felt that some safeguards should be provided for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. Consequently Section 33 was re-drafted in 1956 and considerably expanded.”*

*13. By enacting Section 33 the Parliament wanted to ensure a fair and satisfactory enquiry of an industrial dispute undisturbed by any action on the part of the employer which could create fresh cause for disharmony between him and*



*his employees. The object of Section 33 is that during the pendency of an industrial dispute status quo should be maintained and no further element of discord should be introduced. But then distinction was made between matters connected with the industrial dispute and those unconnected with it.*

**14.** *While construing the scope of sub-section 3 of Section 33 we have to bear in mind the fact that under the common law the employer has a right to punish his employee for misconduct. Therefore all that we have to see is, to what extent that right is taken away by sub-section 3 of Section 33. There is no doubt that at the time the application in question was made, an industrial dispute was pending between the respondent and its employees. It is admitted that the appellant is a “protected workman”. He had not been discharged or punished before the industrial dispute was decided, though no doubt the respondent had proposed to dismiss him after obtaining the necessary permission from the tribunal. The application for permission to dismiss him was made during the pendency of the principal dispute. No such permission would have been necessary if no industrial dispute between the respondent and its employees was pending. Hence, the sole reason for that application was the pendency of the industrial dispute. Once the industrial dispute was decided, the ban placed on the common law, statutory or contractual rights of the respondent stood removed and it was free to exercise those rights. Thereafter there was no need to take anybody's permission to exercise its rights. In other words, the limitation placed on the respondent's rights by sub-section 3 of Section 33 disappeared the moment the industrial dispute was decided. We are in agreement with the tribunal that it had no competence to consider the application made by the respondent after the industrial dispute was decided.”*



63. The above cited case makes it clear that the said provision is designed to protect employees during industrial disputes while allowing employers to maintain some disciplinary control, with specific safeguards in place for “protected workmen”.

64. Furthermore, the insertion of such a provision in the ID Act also depicts the intent of maintenance of the status quo during the time of pendency of the dispute between the employer and the employee.

65. In light of the established legal principles, the adjudication of application and observations made by the learned Tribunal of Section 33 of the ID Act is upheld and this Court holds that the petitioner should have adhered to the requirements of Section 33(3) of the Industrial Disputes Act, 1947. As this was not done in the present case, the dismissal order issued by the petitioner is deemed invalid and in violation of the provisions of the Industrial Disputes Act, 1947

66. Accordingly, it is held that the learned Tribunal rightly adjudicated the complaint made by the respondents under Section 33 and 33A of the ID Act. Thus, the issue no. i is decided in favour of the respondents.

**Issue ii - Whether the complaint made under Section 33A of the ID Act ought to be signed and verified by all parties?**

67. Having adjudicated the first issue, this Court now deems it appropriate to deal with the issue of alleged non-espousal of the claim by all the workmen.

68. The petitioner has raised an objection that the complaint filed under Section 33A of the ID Act is akin to a plaint which ought to have been



compulsorily signed, verified and pursued by all the crew members/workmen and not just by the respondents. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in the case of *Shankar Chakravarti versus Britannia Biscuit Co. Ltd. & Another*<sup>6</sup>

69. However, it is pertinent to mention here that the judgment in *Shankar Chakravarti (supra)*, in its observation portion, refers to Section 33 of the ID Act, which is an application filed by an employer whereas the impugned award is concerned with an application filed by the employees under Section 33A of the ID Act. The relevant paragraphs are reproduced hereinbelow :

*“29. Having examined the matter on precedent it would be worthwhile to examine the matter on principle. The Labour Court or Industrial Tribunal to which either a reference under Section 10 or an application under Section 33 for permission to take an intended action or approval of an action already taken is made, would be exercising quasi-judicial powers, which would imply that a certain content of the judicial power of the State is vested in it and it is called upon to exercise it (see *Bharat Bank Ltd. v. Employees of Bharat Bank Ltd.* [1950 SCC 470 : AIR 1950 SC 188 : 1950 SCR 459 : 1950 SC LLJ 21 : 2 FJR 1] ). A quasi-judicial decision presupposes an existing dispute between two or more parties and involves presentation of their case by the parties to the dispute and if the dispute between them is on a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of arguments by or on behalf of the parties on the evidence (see *Cooper v. Wilson* [(1937) 2 KB 309] ). Parties are arrayed before these quasi-judicial Tribunals either upon a reference under Section 10 or Section 33.*

---

<sup>6</sup>1979 (3) SCC 371.



*There is thus a lis between the parties. There would be assertion and denial of facts on either side. With the permission of the Tribunal and consent of the opposite side, parties are entitled to appear through legal practitioners before these quasi-judicial Tribunals. The system adopted by these Tribunals is an adversary system, a word as understood in contradistinction to inquisitorial system. This also becomes clear from Rule 10-B(1) of the Industrial Disputes (Central) Rules, 1957, which provides that when a reference is made to the Labour Court or Industrial Tribunal, within two weeks of the date of receipt of the order of reference the parties representing workmen and the employer involved in the dispute shall file with the Labour Court or the Industrial Tribunal a statement of demands relying only upon issues which are included in the order of reference and shall also forward a copy of such statement to each one of the opposite parties involved in the dispute. Sub-rule (2) provides that within two weeks of receipt of the statement referred to in sub-rule (1) the opposite party shall file its rejoinder with the Labour Court or the Industrial Tribunal as the case may be and simultaneously forward a copy thereof to the other party. Sub-rule (4) provides that the hearing of the dispute shall ordinarily be continued from day-to-day and arguments shall follow immediately after the closing of the evidence. Sub-rule (6) casts a duty on the Labour Court or the Industrial Tribunal, as the case may be, to make a memorandum of the substance of the proceedings of what the witnesses depose and such memorandum shall be written and signed by the Presiding Officer.*

*31. Rule 15 confers power to admit or call for evidence. Rule 16 enables the Labour Court or Industrial Tribunal to administer oath. Rule 60 prescribes the form of application to be made under Section 33. The application has to be in Form J or K, as the case may be, and has to be on verification. The cause-title in the prescribed form requires that the applicant and the opposite party should be specifically described in the application. These forms are*



*more or less analogous to a plaint in a suit and the reply to be filed would take more or less the form of a written statement. Where the parties are at variance for facility of disposal, issues will have to be framed. It is open to it to frame an issue and dispose it of as a preliminary issue as held in Dalmia Dadri Cement Ltd. v. Workmen [1970 Lab IC 350 : ILR (1969) 2 Punj 7 (P&H HC)] . Parties have to lead evidence. Section 11-C confers power of a civil court under the Code of Civil Procedure on the Labour Court or Industrial Tribunal in respect of matters therein specified. The Labour Court or Tribunal would then proceed to decide the lis between the parties. It has to decide the lis on the evidence adduced before it. While it may not be hide bound by the rules prescribed in the Evidence Act it is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a lis between the parties arrayed before it and must decide the matter on the evidence produced by the parties before it. It would not be open to it to decide the lis on any extraneous considerations. Justice, equity and good conscience will inform its adjudication. Therefore, the Labour Court or the Industrial Tribunal has all the trappings of a Court.”*

70. The above cited extract makes it clear that the Labour Courts and Industrial Tribunals act as a quasi judicial body when dealing with disputes referred to them under Section 10 or Section 33 of the ID Act and therefore, exercise judicial powers vested in them by the state, meaning they handle disputes between parties in a manner similar to traditional courts.

71. *Qua* the said issue, the learned Tribunal noted that the representatives of the said employees had been given the authority to file the complaint on their behalf. In order to substantiate the said claim, the learned Tribunal had relied upon the authority letter of the same.



72. Furthermore, the learned Tribunal also discussed the issue regarding espousal of the dispute and held that since the said provision does not have mandated procedure, the joint complaint application and letter in form F suffice to constitute the issue as a joint issue and filed by the complainant on behalf of all the aggrieved employees.

73. It is no doubt that the Section 10 of the ID Act mandates the proper espousal of the dispute, however, the mandate in the said provision is limited to the espousal of industrial dispute and the provision is silent on the aspect of complaint under Section 33 of the ID Act.

74. Hence, in absence of any clear rule or procedure for filing the application under section 33A of the ID Act individually by the aggrieved persons, this Court finds no merit in the argument that such decision of the learned Tribunal was contrary to law and therefore, the complaint filed by the representative of the employees is legally tenable.

75. Accordingly, the issue no. ii is decided in favour of the respondents.

**Issue iii - Whether the learned Tribunal was right in concluding that there was a contravention of Section 25G and 25F of the ID Act?**

76. Now coming to the last issue, the learned Tribunal held that the petitioner had contravened Section 25F and 25G of the ID Act when they retrenched the workmen without complying with the mandate under the ID Act, however, it is the contention of petitioner that the workmen fall into exception as contemplated by Section 2 (oo) of the ID Act.

77. The relevant part of the said provision is as under:



**“Section 2(oo)** retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

**25F. Conditions precedent to retrenchment of workmen.—**

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25G. Procedure for retrenchment.—**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of



2024:DHC:6001



*workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.”*

78. The plain reading of the said provision makes it clear that the Section 25F states that before retrenching a workman with at least one year of continuous service, the employer must provide one month's notice or pay in lieu of notice, pay compensation, and notify the government. When deciding which workman to retrench, the employer should generally retrench the last person hired within the relevant category unless a different order is justified with recorded reasons.

79. It is the contention of petitioner that the respondents were appointed on a fixed term contract and its termination as per stipulation contained in the contract is an exception to the definition of retrenchment under Section 2(oo)(bb) of the ID Act. Thus, the petitioner was not obligated to comply with Sections 25F and 25G of the ID Act.

80. The term ‘retrenchment’ leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action are being termed as retrenchment with certain exceptions and it is not dependent upon the nature of employment and the procedure, pursuant to which the workman has entered into service. In continuation thereof, the condition precedent for retrenchment has been defined under Section 25F of the ID Act which postulates that the workman employed in any industry, who has been in



continuous service for not less than one year, can be retrenched by the employer after clauses (a) and (b) of Section 25F have been complied with. As per the judicial dictum, compliance with both the clauses (a) and (b) of Section 25F have been held to be mandatory and its non-observance is held to be *void ab initio* bad. The relevant part of the said provision is as under:

***“25B. Definition of continuous service.- For the purposes of this Chapter (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman; (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—***

*(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--*

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
- (ii) two hundred and forty days, in any other case;*

*(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--*

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and*
- (ii) one hundred and twenty days, in any other case.*



*Explanation.--For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which--*

*(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;*

*(ii) he has been on leave with full wages, 15 earned in the previous years;*

*(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and*

*(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]”*

81. Therefore, this Court is of the view that the scheme of the ID Act contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination, and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the ID Act, and to its non-observance held the termination to be void *ab initio* bad, and so far as the consequential effect of non-observance of the provisions of Section 25F and 25G of ID Act, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman.

82. In *Devinder Singh v. Municipal Council, Sanaur*<sup>7</sup> it was held by the Hon'ble Supreme Court held that the definition of the workman also

---

<sup>7</sup>(2011) 6 SCC 584



does not make any distinction between full time and part time employee or a person appointed on contract basis, and if the mandatory requirements of the ID Act are violated, it would amount to retrenchment under the meaning of Section 2(oo) of the Act. The relevant portion of the said judgment reads as under:-

*“12. Section 2(s) contains an exhaustive definition of the term ‘workman’. The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term ‘workman’.*

*13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.*

*14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for*



*doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*

*15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of 'workman'.*

*16. In Birdhichand Sharma v. First Civil Judge, Nagpur 1961 (3) SCR 161 this Court considered the question whether bidi rollers were workmen within the meaning of the term used in the Factories Act, 1948. The factual matrix of the case reveals that the workers who used to roll the bidis had to work at the factory and were not at liberty to work at their houses. Their attendance was noted in the factory and they had to work within the factory, though there was freedom of doing work for particular hours. They could be removed from service on the ground of absence for eight days. The wages were paid on piece-rate basis. After considering these facts, the Court held that the bidi rollers were workmen. The Court observed that when the operation was of a simple nature and did not require supervision, the control could be exercised at the end of the day by the method of rejecting bidis which did not meet the required standard and such supervision was sufficient to establish the employer employee relationship.*

*17. In Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments (1974) 3 SCC 498 the three Judge Bench held that the tailors employed in a tailoring shop, who were paid according to their skill and work and the quality of whose work was regularly checked were employees covered by the Andhra Pradesh (Telengana Area) Shops and Establishments Act, 1951.*



18. In *L. Robert D'souza v. Executive Engineer* (1982) 1 SCC 645 the Court held that even a daily rated worker would be entitled to protection of Section 25-F of the Act if he had continuously worked for a period of one year or more.

19. Section 25 couched in negative form. It imposes a restriction on the employer's right to retrench a workman and lays down that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched until he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or he has been paid wages for the period of notice and he has also been paid, at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner has been served upon the appropriate Government or the authority as may be specified by the appropriate Government by notification in the Official Gazette.

20. This Court has repeatedly held that the provisions contained in Section 25F (a) and (b) are mandatory and termination of the service of a workman, which amounts to retrenchment within the meaning of Section 2(oo) without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void/illegal/inoperative *State of Bombay v. Hospital Mazdoor Sabha* AIR 1960 SC 610, *Bombay Union of Journalists v. State of Bombay* AIR 1964 SC 1617, *State Bank of India v. N. Sundara Money* (supra), *Santosh Gupta v. State Bank of Patiala* (1980) 3 SCC 340, *Mohan Lal v. Bharat Electronics Ltd.* (1981) 3 SCC 225, *L. Robert D'Souza v. Southern Railway* (supra), *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court* (1980) 4 SCC 443, *Gammon India Ltd. v. Niranjan Dass* (1984) 1 SCC 509, *Gurmail Singh v. State of Punjab* (1991) 1 SCC 189 and *Pramod Jha v. State of Bihar* (2003) 4 SCC 619.

21 In *Anoop Sharma v. Executive Engineer, Public Health Division, Haryana* (supra), the Court considered the effect of violation of Section 25F, referred to various precedents on the subject and held



2024:DHC:6001



*the termination of service of a workman without complying with the mandatory provisions contained in Section 25-F (a) and (b) should ordinarily result in his reinstatement.*

*22. We may now advert to the impugned order. A careful analysis thereof reveals that the High Court neither found any jurisdictional infirmity in the award of the Labour Court nor it came to the conclusion that the same was vitiated by an error of law apparent on the face of the record. Notwithstanding this, the High Court set aside the direction given by the Labour Court for reinstatement of the appellant by assuming that his initial appointment/engagement was contrary to law and that it would not be in public interest to approve the award of reinstatement after long lapse of time. In our view, the approach adopted by the High Court in dealing with the award of the Labour Court was ex facie erroneous and contrary to the law laid down in Syed Yakooob v. K.S. Radhakrishnan AIR (1964) SC 477, Swaran Singh v. State of Punjab (1976) 2 SCC 868 P.G.I. of Medical Education & Research, Chandigarh v. Raj Kumar (2001) 2 SCC 54, Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675 and Shalini Shyam v. Rajendra Shankar Path (2010) 8 SCC 329."*

83. Upon perusal, it is made out that Section 2(s) of the Industrial Disputes Act provides an exhaustive definition of the term "workman," encompassing any person employed in any industry for various types of work (manual, skilled, technical, etc.) for hire or reward, regardless of whether the terms of employment are written. The definition also includes individuals who have been dismissed, discharged, or retrenched in connection with or as a result of an industrial dispute.

84. On the criteria of determining workman status, the above cited extract makes it clear that the method of employment, terms of the contract, wage amounts, or mode of payment are irrelevant in



2024:DHC:6001



determining whether a person qualifies as a workman. The Act does not differentiate between full-time, part-time, contractual, or temporary employees. What matters is whether the person is employed in an industry for hire or reward to perform specific types of work. This broad interpretation ensures that various forms of employment, including casual or part-time work, fall under the protection of the Act.

85. Furthermore, the Courts of the country have consistently held that even workers engaged in simple tasks, such as *bidi* rollers or tailors, are considered workmen under the law. The key factor is the employer-employee relationship, which is established through control, supervision, and payment for services. The Hon'ble Supreme Court has ruled in several cases that daily-rated workers and other similar employees are entitled to protections under the Act, such as those provided by Section 25F, which governs retrenchment.

86. Given the established law, this Court cannot agree with contention of petitioner that non-compliance with Section 25G and 25F of the ID Act was legal. This Court is of the considered view that the respondents having completed the continuous service of varying periods from 14 to 15 years, the mandatory provision of Section 25F and Section 25G of the ID Act should have been complied with by the petitioner management.

87. In view of the same, this Court finds no perversity in the findings of the learned Tribunal regarding the instant issue.

88. Accordingly, issue no. iii is decided in favour of the respondents.



2024:DHC:6001



## **CONCLUSION**

89. The scope of intervention of the Court in an award passed by the Labour Courts/Industrial Tribunals under its writ jurisdiction is very limited and the same can only be done if the Court below has erred in law. It is well settled that the writ Court cannot get into the facts of the case and need to appreciate the findings made by the learned Tribunal in this regard.

90. In the instant case, the learned Tribunal adjudicated the complaint filed by the respondents on the aspect of alleged illegal termination. While dealing with various issues, the learned Tribunal held that the petitioner entity violated Section 33 of the ID Act and therefore, the termination cannot be held to be legal in the eyes of law.

91. As per the discussion in the foregoing paragraphs, this Court finds deems it appropriate to state that the petitioner, at this stage, cannot be permitted to take a view contradictory to the view taken by it before the learned Tribunal.

92. It is observed by this Court that the learned Tribunal has provided a detailed discussion in the impugned award which is based on the testimony and evidence presented before it. The reasoning in the impugned award evidently shows that the same is in accordance with the law and there is no infirmity in arriving at the said finding.

93. This Court has given a detailed scrutiny to the findings of the learned Tribunal and it is held that the contention of the petitioner management that the learned Tribunal erred in adjudicating the issue of



2024:DHC:6001



maintainability of complaint, espousal and violation of conditions for dismissal does not hold any ground and therefore, the same cannot be accepted in any manner.

94. Taking into consideration the aforesaid, it is held that the petitioner management has failed to make out a case to show that the learned Tribunal has acted in an arbitrary manner or in contravention to the law.

95. In view of the aforesaid facts and circumstances as well as the discussions on law, this Court does not find any error or illegality in the impugned award dated 3<sup>rd</sup> July, 2023 passed by the learned Central Government Industrial Tribunal cum Labour Court-II, New Delhi in case bearing I.D. no. 21/2021, and the same is hereby upheld.

96. Accordingly, the instant petition stands dismissed along with the pending applications, if any.

97. The judgment be uploaded on the website forthwith.

**(CHANDRA DHARI SINGH)**  
**JUDGE**

**AUGUST 6, 2024**  
**gs/av/ryp**

**W.P. (C) 1376/2024**

**Page 69 of 69**