

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE

W.P.A 2156 of 2024

M/s. Zydus Healthcare Ltd.

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner	:	Mr. Asish Kumar Das Mr. Sunny Nandy Mr. Md. Baharuzzaman Ms. Yamini Tiwari	Advocates
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For the State	:	Mr. Rajarshi Basu Mr. K.M. Hossain	Advocates
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For the Respondents No. 3	:	Mr. Balaram Patra Mr. Suvadip Bhattacharjee	Advocates
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Heard on	23 rd December, 2025
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Judgment on	: 24 th December, 2025
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Arindam Mukherjee, J.:

1.

(i) The admitted facts are that there was a dispute regarding the age of superannuation of a certain class of employees in the employer

organisation including the respondent-employee through a registered Trade Union while they were absorbed in the service of the petitioner-company. This issue was considered by the State Government and referred to the Industrial Disputes Tribunal (hereinafter referred to as the "Tribunal") as an industrial dispute under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 1947 Act) other Trade Unions to which the petitioner was a member had also joined such proceedings for due adjudication.

- (ii) The petitioner (employer) raised a dispute as to the maintainability of the Industrial Dispute which the Tribunal intended to decide at the threshold while deciding the industrial dispute.
- (iii) During the pendency of the said industrial dispute, the service of the respondent-employee was terminated. Records does not reveal as to whether the respondent no. 3 (employee)(was dismissed after a properly initiated and conducted disciplinary proceedings.
- (iv) The termination of service of the respondent-employee, therefore, squarely come under the provisions of Section 33(1) (a) and (b) of the 1947 Act as the amounts to alter to the prejudice of the workman concerned in such industrial dispute, his service conditions.
- (v) The employer (petitioner), therefore, could not have given effect to the dismissal and/or order of termination of service of the respondent employee without the approval of the Tribunal as

provided under Section 33 (2) (b) of the 1947 Act read with the provisions of Section 33(1) (a) and (b) with the proviso of the 1947 Act. This also gives the respondent employee a right to apply under the provisions of Section 33A of the 1947 Act to the Tribunal before which the dispute was pending.

- (vi) Admittedly, going by the number of the application it is clear that the application under Section 33A of 1947 Act, filed by the employee was registered prior in time than the application by the employer under the provisions of Section 33(1) and (2) of the said Act. The employee's application is numbered as 02 of 2013. While that filed by the employer was numbered as 06 of 2013. It is, however, the case of the employer that its application was sent from Bombay to the Tribunal before filing of the employees application but due to reasons beyond the control of the employer, its application was registered after that of the employee.
- (vii) During the pendency of the application under Sections 33A and 33 (2) (b) read with Section 33 (1) and (2) of the 1947 Act the main industrial dispute got settled between the parties which fact is also not in dispute. The employer (petitioner) challenged the "No Dispute Award" order passed in the reference by filing a writ petition being W.P No. 1541(w) of 2018 which is pending. Prior to withdrawal of the reference, the petitioner (employer) made an application for keeping the application of the respondent no. 3

(employee) under Section 33A of the 1947 Act is not maintainable and should be kept in abeyance. This prayer of the petitioner was rejected which was challenged before this Court by filing WP No. 195(w) of 2019 which is also pending.

- (viii) The withdrawal of the main industrial dispute, however, kept the applications made under Section 33A by the employee and that under Sections 33 (1) and (2) (b) of the 1947 Act made by the petitioner-employer pending. These applications remained pending because the cause if any, to file the same were different though arose because of the pendency of the industrial dispute at the time of the institution of the said two applications. The fact remains that at the time when the order of termination was passed against the respondent-employee, the industrial dispute was pending.

2. The petitioner has raised the following issues:

“1. Is the application U/S 33A of the ID Act, 1947 maintainable?”

2. Has the workman any right to file the application U/S 33A of the ID Act, 1947?”

3. Has the Tribunal jurisdiction to adjudicate upon the matter involved in the application U/S 33A of the I.D. Act, 1947 ?”

The petitioner has contended that the foundation of an application under Section 33A of the 1947 Act is in violation or contravention of the provisions of Section 33(2) (b) of the said Act. Unless, the Tribunal comes to a finding that

there has been a contravention of the provisions of Section 33(2) (b) of the 1947 Act, the Tribunal cannot entertain the application under Section 33A of the said Act. Thus, the adjudication of the petitioner's application under Section 33(2) (b) of the 1947 Act has to be made at the first instance. If there is a contravention of the provisions of Section 33 by the petitioner then the order dismissing the employee/workman will be looked into as if no order of termination ever existed. The workman/employee has to be reinstated. On the other hand, if approval is granted then the Tribunal will have to hold that there has been no contravention of the provisions of Section 33 (2) (b) of the 1947 Act. Once, this is held, the whole basis of the employee's application under Section 33A of the 1947 Act will become redundant. The application of the respondent no. 3 (employee) under Section 33A of the 1947 Act is therefor not maintainable. The petitioner has cited two judgments in this context, respectively reported in **1978 (2) SCC 144 (Punjab Beverages (P) Ltd. & Ors. v. Suresh Chand & Ors.)** and **2002 (2) SCC 244 (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma & Ors.)**. The petitioner also contends that the provisions of Section 33 (2) (b) of the 1947 Act has been inserted for a purpose other than that for which Section 10 (1) (c) and (d) have been enacted. Even an order of approval granted under Section 33(2) (b) has no binding effect in the proceedings under Section 10(c) and (d) of the 1947 Act which has to be decided independently owing on the material adduced by the parties. In this regard, the petitioner has relied upon two judgements respectively reported in **2019 (18) SCC 47 (John D'Souza v. Karnataka**

State Road Transport Corporation)* and *2005 (3) SCC 241 (Cholan Roadways Ltd. v. G. Thirugnanasambandam).

It is also the case of the petitioner that the right created under Section 33(2) (b) of the 1947 Act involving the employer to make an application for seeking approval from the Tribunal wherein the industrial dispute is pending and it at the same time creates a corresponding duty on the employee from not doing anything which is an obstruction to filing of an application under Section 33 (2) (b) of the said Act. In this regard, the petitioner has referred to the judgment reported in ***2019 (2) CLR 629 (Bombay) (Lokmat Media Pvt. Ltd (Formerly known as Lokmat Newspapers Private Limited, Nagpur) vs. Vijay s/o Krushnarao Pawar & Ors.)*** It is also the case of the petitioner that in the event, an application under Section 33A of the 1947 Act is allowed to continue the proceedings under Section 33 (2) (b) of the said Act would become meaningless.

3. The respondent no. 3 (employee) on the other and has contended that the writ petition is an abuse of process of law and Court. The employer in order to show its overwhelming power and authority to deprive the petitioner of the fruits of his rights conferred under the 1947 Act has indulged in filing two previous writ petitions. No interim order or stay has been obtained in the said two writ petitions. The petitioner is also not interested in having those two writ petitions heard as the petitioner knows that the same are of no assistance to the petitioner once the order

of dismissal has been challenged by the respondent no. 3 under the provisions of Section 33A of the 1947 Act. The petitioner is therefore, trying to delay the proceedings to cause further prejudice to the respondent no. 3. The respondent no. 3 has also contended that the learned Tribunal has to seek whether three acts have been done simultaneously or not. The Tribunal has to see whether the dismissal or discharge has taken place, whether payment of wages have been made and an application under Section 33 (2) (b) has been made for approval of the dismissal are simultaneous. In the instant case, the petitioner did not file the application under Section 33 (2) (b) of the 1947 Act simultaneously with the dismissal. This has compelled the respondent no. 3 coming to know of the dismissal from service to file an application under Section 33 A of the 1947 Act as by such order, the petitioner (employer) has sought to alter the service conditions of the respondent no. 3 (employee) during the pendency of the reference. The respondent no. 3 has relied upon the judgment reported in **1992 II LLN 673 (Gangpur Labour Union vs. Industrial Tribunal, Orissa and Anr.)** and have contended that the writ petition should be dismissed.

4. The moot questions on the basis of the facts as aforesaid which fall for consideration in this matter after hearing the parties are:-
 - i) Whether the respondent-employee was entitled to file an application under Section 33A before the employer's application

under Section 33(1) of the Industrial Disputes Act, 1947 (in short '1947' Act) was registered.

- ii) Whether the maintainability of the pending industrial dispute as raised by a registered Trade Union for the employers including the interest of the respondent-employee was required to be adjudicated first then only the application of the employer under Section 33(1) of the 1947 Act was to be heard?
- iii) Whether the Tribunal can proceed with the application of the employee under Section 33A before adjudicating the application under Section 33(1) made by the employer being registered before the employer's said application?

5. The object of Sections 33(1) and (2) of the 1947 Act is not to alter the conditions of service of an employee which were prevalent at the time of initiation of an industrial dispute. On a conjoint reading of various Sections of the 1947 Act it is explicit that the legislature wanted to give a protection to an employee during the pendency of an industrial dispute by curtailing the free hand available to an employer to terminate the services of a workman. At the same time the legislature has given the employer the right to terminate the services of the employee in case of misconduct or of like nature but subject to the approval of the Tribunal before which the industrial dispute was pending. The legislature have also provided the employee with a right to apply to the Tribunal before

which the industrial dispute is pending to have the issue as to whether his conditions of service have been altered under Section 33A of the 1947 Act. Thus, on a conjoint reading of the provisions of Section 33(1) and (2) and 33A of the 1947 Act it is clear that the employee is not absolutely precluded from terminating the services of an employee during the pendency of an industrial dispute but can do so only after its decision to terminate is approved by the Tribunal if it brings a change to the service conditions of an employee or is prejudiced to the employees interest.

6. The findings as aforesaid also finds approval of the Hon'ble Supreme Court as held in Punjab Beverages (supra) wherein the object of Section 33A vis-à-vis Section 33(1) and (2) have been discussed in details. The order of dismissal is voidable till adjudication of an application under Section 33(2) (b) of the 1947 Act. Once the approval is refused it becomes void while on being approved it is upheld. However, in both the cases it has to be adjudicated after considering the compliant under Section 33A of the said Act, if any, made by the employee. In the case before the Supreme Court in Punjab Beverages was an order of dismissal of the employee during the pendency of a reference after holding a disciplinary proceeding. Even in such a case, the Hon'ble Supreme Court held that the employee sought to be dismissed has the right to challenge the dismissal under the provisions of Section 33A of the 1947 Act and

the employer has to seek approval under Section 33(2) (b) of the said Act which is a mandatory statutory provision.

7. In Ramgopal Sharma (supra) the Hon'ble Supreme Court has reinstated the same principles and have held that the provisions of Section 33(2) (b) of the 1947 Act to be mandatory and independent of Section 10 (1) (d) and Section 31 (1) of the said Act. It has been also held that an application under Section 33 (2) (b) of the 1947 Act has to be looked into in the light of the provisions of Section 33A of the said Act.
8. The petitioner (employer), therefore, was statutorily bound to have the approval of the Tribunal before which the industrial dispute was pending to give effect to the order of termination of service of the respondent employee as the act of dismissal is prejudicial to the interest of the employee during the pendency of the reference. At the same time with the passing of the order of termination the right in respect of the respondent employee to challenge the same under Section 33A of the 1947 Act has also accrued. A *lis* is decided on the basis of a cause of action if any at the time of institution of such *lis*. Thus, in the instant case, the right, if any, had accrued in favour of the respondent-employee with the issuance of the order of termination during the pendency of the industrial dispute. The settlement of the dispute at a subsequent stage does not alter the position as the employer during the pendency of the industrial dispute intended to alter the service conditions of the respondent-employee or cause prejudice to him when an industrial

dispute was pending in connection with the service conditions of the respondent- employee. At the same time, the issuance of the termination notice gives right to the respondent employee to file an application under Section 33A irrespective of the fact that the employer (petitioner) had filed an application for approval of the Tribunal under Section 33(1) (b) of the 1947 Act. This interpretation is more reasonable as an employer may after terminating the service on the ground that the termination does not affect the service condition of an employee or the same is not prejudicial to the interest of the employee does not file an application under Section 33(2) (b) of the said Act.

9. In this context, I am unable to accept the arguments advanced on behalf of the petitioner (employee) that the provisions under Section 33 (1) and (2) are enabling provisions available to an employer and has to be resolved at the first instance to seek approval of the Tribunal to give effect to the termination. If the approval is granted the employee has no right under Section 33A to be exercised. The rejection of the argument is on two-fold grounds- Firstly, in an application by the employer under Section 33(1) and (2) (b) the employee has the normal defence to resist the same by contending the same is prejudicial to the interest of an employee or tends to alter the service conditions of an employee. There was as such no necessity for the legislature to provide the two rights separately under two different provisions. Secondly, even in absence of

an application for permission by the employer, the employee can invite the alteration of the Tribunal to adjudicate that the employer has altered his service conditions during the pendency of an industrial dispute in contravention of the provisions of the statute by giving evidence.

10. The whole object of Sections 33(1), 33 (2) and 33(A) on a conjoint reading with other provisions of the 1947 Act clearly demonstrate that the provision of Section 33 (1) and (2) was introduced so that no mischief can be done to an employee by the employer during the pendency of the industrial dispute as stated hereinabove to render the industrial dispute infructuous.

11. At the same time, the provisions of Section 33 (1) and 33 (2) (b) does not provide for an independent mechanism in favour of an employer *de hors* the provisions of Section 33A of the 1947 Act. They are interlinked. An employee on being sought to be removed or terminated from service in defence of an application under Section 33 (1) (a) and (b) made by the employer may put forth his case of alteration of the service conditions. However, in a hypothetical situation, an employer may not by filing an application under Section 33 (2) (b) for any reason including the allegation of no change in service conditions may not apply under Section 33(2) of the 1947 Act harass the employee in contravention of the objects of Section 33(1) and (2) of the said Act. In such a situation, the employee will not be in a position to challenge his order of dismissal and/or termination if it is held that unless an application under Section

33(2) (b) is filed an application under Section 33A cannot be filed and maintained as contended by the petitioner and seek a relief. Section 33A is therefore, is an independent provision available to an employee to raise dispute against his termination during the pendency of the industrial dispute even if an application under Section 33 (2) (b) of the said Act is filed. While deciding an application under Section 33A, the employer will have the same defence available to it as a petitioner in an application under Section 33(2) (b) of the 1947 Act. So far as the other issues are concerned as raised by the petitioner and respondent employee are concerned the same are also answered in the light of the discussion above and are not required to be answered separately.

12. In respect of the other judgments cited at the bar, although there is no quarrel as to the ratio laid down therein but the same are not applicable in the facts of the instant case.

13. In the instant case, when the main industrial dispute has been settled the maintainability point raised by the employer to such dispute is no more available while adjudication of the two applications now pending before the Tribunal. The pendency of the two writ petitions are of no consequence as the adjudication of the issues involved in this writ petition. The petitioner, if has to challenge the order to be passed by the Tribunal in the two pending applications will have the right to raise the issues raised in the writ petition challenging the order being the subject matter of W.P. No. 1541(w) of 2018. At the same time, it will be prudent

on the part of the Tribunal to consider the application under Section 33A along with the application under Section 33(1) and (2) of the 1947 Act so that the rights of the employer *viz-a-viz* the employee is finally adjudicated taking into account the claims and counter-claims.

14. The writ petition is accordingly disposed of directing the Tribunal to hear out both the applications as expeditiously as possible but not beyond six months from the date of communication of this order.

Urgent photostat certified copy of this judgment be supplied to the parties, if applied for, upon compliance of all requisite formalities.

(ARINDAM MUKHERJEE, J.)