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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 11.12.2024

ORDERS DELIVERED ON : 04.02.2025

Coram:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P. No.1655 of 2007

1.S.Narasimhan
2.T.Subramaniam
3.M.Govindudu

... Petitioners

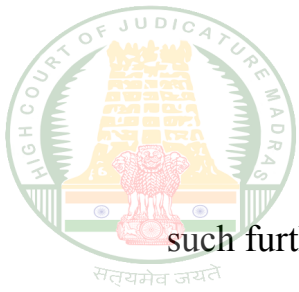
Vs.

1.The Industrial Tribunal
High Court Buildings
Chennai – 600 104.

2.The Management of M.R.F. Limited
Rep.by its General Manager
Itchiputhur, Arakonam
Vellore District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the relating to the impugned common order passed by the first respondent – Tribunal in Complaint Nos.38, 39 and 42 of 1997 dated 15.04.2004 and quash the same, in so far as it relates to the petitioners herein and direct the respondent management to reinstate them in service with back wages and consequential benefits and pass



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such further or other orders.

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For Petitioners : Ms.C.S.Monica
For Respondents : For R1 – Tribunal
Mr.S.Shivathanu Mohan
and Ms.N.Swathy
for M/s Ramasubramaniam Associates
for 2nd respondent

ORDER

A.The Writ Petition:

This Writ Petition is filed challenging the common order passed by the Industrial Tribunal, *Chennai*, dated 15.04.2004 in Complaint Nos.38,39 and 42 of 1997. By the said order, the complaints filed under Section 33A of the Industrial Disputes Act, 1947 (hereinafter 'the ID Act') by the three workmen were dismissed.

B.Case of the Workmen:

2. The case of the three workmen who have filed the present writ petition is that all the three workmen were originally appointed as temporary workers in the year 1985-86, thereafter they were again taken in as apprentices for a meagre salary and in the year 1987 -1989, their services were confirmed. The

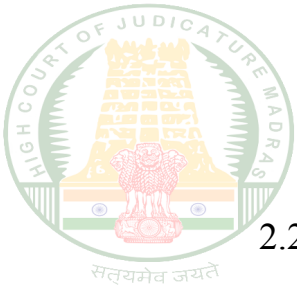


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management floated a puppet union and forced the workmen to join the said Union. On 22.09.1992, the management alleged various misconducts against the workmen and letters were sent to 176 workmen directing them to give an undertaking that they would not indulge in intimidation, coercion, or assault against fellow workers. Of the said 176 workmen 105 executed the undertaking. In respect of the balance of 71 employees, an individual lockout was announced.

2.1. A dispute was raised in respect of the same and conciliation failed. The matter was referred for adjudication by the Tribunal and the same was taken on file as I.D. No. 11 of 1994. Of the 71 workmen 58 workmen entered into individual settlements with the management and only 13 workmen which included the three petitioners herein, remained in the dispute. On 07/10/1996, a memo was filed by the Secretary of the Trade Union to withdraw the claim petition. However, the same was opposed by the President as well as the present workman upon which the same was dismissed by the Tribunal. While so, by invoking clause 27 of the Standing Orders, the petitioners herein were terminated from service. Since the termination was done without any prior permission or approval, the present complaints under Section 33 A of the ID Act were filed.

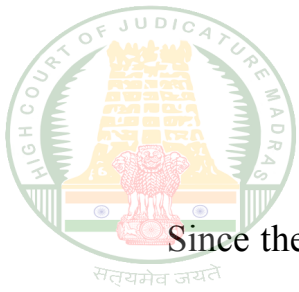


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2.2. Thereafter, the secretary filed W.P. No. 975 of 1997 against the dismissal of his prayer to withdraw the claim and by an order dated 03.06.1999 the same was allowed. Pursuant to the said order, the ID was dismissed as withdrawn by an order dated 28.07.1999. A writ appeal was filed in W.A. No. 1518 of 1999, which was allowed, with liberty to the individual workmen to proceed in accordance with law. On further appeal in SLP No. 23840 of 2010, the said order was confirmed while the observations were expunged.

C.Case of the Management:

3. The case of the management is that when the workman indulged in vandalism and misconduct, individual lock-out notices were issued to 176 workmen in the year 1992. Thereafter, on 28.09.1992, the management issued a notice seeking an undertaking from the workmen. 105 out of 176 submitted the undertaking. The remaining workmen raised a dispute through the Union in I.D. No. 11 of 1994. Of the 71, 62 resolved their disputes by entering into 18(1) settlements. Six out of the nine remaining workmen were terminated from service in connection with another incident involving the assault of a co-worker. While so, on 22/12/1995, the Union filed a memo to withdraw I.D. No. 11 of 1994.



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Since the retention of the three remaining workmen, being the petitioners herein, became impracticable and unworkable, by invoking Clause 27 of the Standing Orders, their services were terminated. The complaint was further resisted on the ground that Section 33 of the ID Act is not attracted as the instant case was not a punishment for misconduct, and it would not also amount to an alteration of conditions of service. After further developments, it is the further contention of the management that when the dispute itself is withdrawn, it should date back to the original date of filing of the memo in the year 1996, and as such, no dispute was deemed to be pending on the date of termination of these workmen.

D.Proceedings before the Tribunal:

4. In the enquiry, before the tribunal, in Complaint No. 38 of 1997, the workman examined himself as **WW-1** and **Exs.W1 to W-18** were marked. In Complaint No.39 of 1997, the workman examined himself as **WW-1** and one *A. Sivananda* was examined as **WW-2** and **Exs. W1 to W7** were marked. In Complaint No.42 of 1997, the workman examined himself as **WW-1** and **Exs. W1 to W9** were marked. In all the three complaints, one *R. Sundararajan* was examined as **MW-1** and **Exs. M1 to M34** were marked.



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4.1. The Tribunal thereafter considered the case of the parties. It held that the termination was not due to any misconduct but was a termination simpliciter. It further held that considering the circumstances of the case when so many workmen were involved and others had given an undertaking, and the petitioners were the ones who were left out, would amount to reasonable cause as per Clause 27 of the Standing Orders, and hence the same is in order. It further found that Section 33 (1) (b) of the ID Act is not attracted, because it is not due to any misconduct or punishment. Section 33(1)(a) of the ID Act is not attracted as termination simpliciter is not a condition of service, which is enumerated in the Schedule of the Act. As such, it held that the complaint was without any merit and dismissed the same. Aggrieved, thereby, the present writ petition is filed.

E.The Submissions:

5. *Ms.C.S. Monica*, the learned Counsel appearing on behalf of the workmen, would submit that, firstly, the Tribunal did not permit the dispute to be withdrawn. When the order was passed in the Writ Appeal, in para 16, it has been categorically mentioned that the legal question is answered in favour of the



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workmen and only because the order has been passed allowing the matter to be withdrawn, in para 19, liberty was given to the individual workmen to work out their remedies. Even the SLP confirmed the order while expunging only the observations. Thus, the dispute was very much alive when the petitioners were terminated. Further relying upon Section 20(3) read with Section 17A of the ID Act, she would submit that the proceedings are deemed to be pending till the date when the award becomes enforceable. Thus, the actual award was passed on 28.07.1999, and therefore, the proceedings were pending. The Learned Counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in *New India Motors (P) Ltd. -Vs- K.T. Morris*¹, more fully relying upon paragraph 9. She would further rely upon the Judgment reported in *Bhavnagar Municipality -Vs- Alibhai Karimbhai & Others*², (paragraphs 9 and 13).

5.1. *Ms. Monica*, the learned counsel further taking this Court through Section 33 of the ID Act would submit that in this case, it can be seen that once the workmen did not execute the undertaking, for that misconduct they were terminated. The order contains stigma. The reason is not a valid reason or reasonable cause as per Clause 27. Thus when the petitioners are directly

¹ (1960) SCC OnLine SC 96

² AIR 1977 SUPREME COURT 1229



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involved in the dispute and the matter relates to the very dispute, without prior

permission action ought not have been taken.

5.2. To contend that the termination is illegal she would rely upon the Judgment in *Mahendra Singh Dhantwal -Vs- Hindustan Motors Ltd*³ (Paragraphs 6,18,19,20 & 25). She would further rely upon the judgment in *Dipti Prakash Banerjee -Vs- Satyendra Nath Bose National Centre for Basic Sciences*⁴, (paragraphs 36 & 37). Further explaining the delay of three years in filing the writ petition, the learned counsel would rely on the Judgment in *Ram Chandra Yadav -Vs- State Of Bihar And Ors.*⁵; *Managing Director -Vs- Kallappa Narasappa Sangale & ors.*, (Bombay High Court dated 10/12/2011) and the Judgment in *Vetindia Pharmaceuticals Ltd. -Vs- State of U.P.*⁶.

5.3. *Mr Shivathanu Mohan*, the learned counsel appearing on behalf of the management, by taking this court through the order passed in the Writ Petition, Writ Appeal and the Special Leave Petition would submit that once the memo filed by the Union was accepted and the dispute is permitted to be withdrawn,

3 (1976) 4 SCC 606

4 (1999) 3 SCC 60

5 (1988) SUPP SCC 779

6 (2021) 1 SCC 804



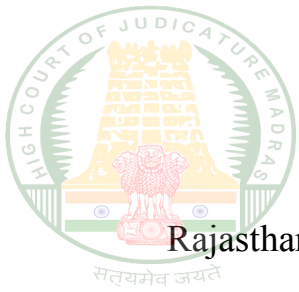
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then the same has to date back to 22.12.1995 and as such as on date of termination of the petitioners no dispute was pending. Once the claim itself is withdrawn, the entire thing should be deemed to be wiped off and therefore, there is no question of permission or approval from the Tribunal.

5.4. The Learned Counsel would further submit that even otherwise, the action will not attract Section 33(1)(a) or 33(2)(a) of the Act, because, termination simpliciter does not amount to alteration of conditions of service. It is not a condition of service that is enumerated in the V Schedule of the ID Act. For alteration of conditions of service, the existence of service is necessary. When the same is terminated, there is no question of alteration of conditions of Service.

5.5. Similarly, the action would not fall within Section 33(1)(b) or 33(2)(b) of the Act, as the same is not a discharge or dismissal on account of any misconduct or domestic enquiry. The workmen themselves have admitted the said fact in the cross-examination.

5.6. *Mr. Shivathanu Mohan*, would rely upon the Judgment of the



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Rajasthan High Court in *Babulal Vaishnav -Vs- Industrial Tribunal and Ors*⁷

and the Judgment of the Kerala High Court in *Kundan Manu and Ors -Vs- Aspinwalla and Co. Ltd and Ors.*,⁸ in support of his submissions.

5.7. The Learned Counsel also submits that when the order was passed on 23/03/2004, the writ petition was filed only in December 2006. The delay is unexplained. Thus, at this point, no relief should be granted to the workmen.

5.8. Upon considering the submissions made and perusing the material records, the following points arise for consideration :

(i) Whether the termination of the three workmen by invoking Clause 27 of the Standing Orders is justified?

(ii) What is the date on which the Industrial Dispute in ID No. 11 of 1994 is deemed to have come to an end and whether it can be said to be pending as on the date of the termination of the workmen?

(iii) Even if it is pending, does the action attract Section 33 of the ID Act?

(iv) Whether the writ petition of the workmen is hit by delay and laches?

⁷ (2008) 3 ILR (Raj) 428

⁸ (1963) 1 LLJ 212 Ker



(v) To what relief the workmen are entitled to ?

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F. Question No.(i):

6. The termination order also annexed the original notice which was extracted below:-

“Further, on 19-09-1992, in III shift, you entered the Factory premises, put the token and then, instead of reporting for work, you had unlawfully assembled along with other workmen near the Main Gate, obstructed the vehicular traffic, blocked other workmen from entering into the factory, coerced, intimidated and threatened them. Apart from this, you had failed to report for work even though, you were advised through Notice Board to desist from such acts and go to the workspot and do your work. You had indulged in 'Stay-in-Strike' without giving any notice and also without any reasonable cause. You were also advised through the Notice Board that serious action would be taken if you did not report, but you continued the 'stay-in-strike at the main Gate along with other workmen. Your unlawful assembly and illegal and unreasonable "stay-in-strike near the main gate disrupted the inward and outward vehicle traffic, caused blockade to the movement of the workmen and caused obstruction to the workmen from reporting for work. In addition, security functions at the main gate, like checking of vehicles and personnel could not be carried out, and therefore caused total chaos and confusion.

On 21-9-1992:, at about 6.15 a.M., you had assembled unlawfully in front of the Company's main gate, along with an unruly mob, which comprised of workmen and some outsiders and had intimidated the workmen who were reporting for duty by assaulting and coercing and prevented them from reporting for work. You and your group of men continued all unlawful activities such as restraining, gheroaing, assaulting, intimidating, coercing in front of the main gate and detained all the workmen unlawfully who reached the factory gate for reporting in the I shift. You also stopped all the private and government buses in which the I shift workmen have travelled and dragged them out from the buses and prevented them attending work. Furthermore, you blocked one



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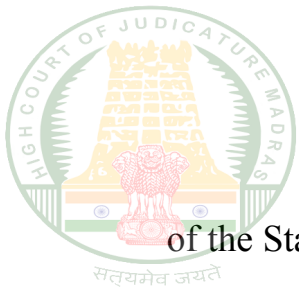
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Ambassador Car and four Vans in which the workmen were travelling to the, factory and assaulted a few workmen and evicted them from the vehicles forcibly.

5. All these illegal and unlawful activities mentioned above, created a dangerous situation leading to unsafe condition for both men and machinery. Moreover, you continued to give low production by adopting go-slow tactics compared to your previous performance, as explained in detail, above.

6. In the above circumstances, the Management is left with no other alternative, except to refuse with immediate effect, to continue to employ you until such time you furnish a written undertaking in specific terms acceptable to the Management that once you enter the Factory premises, you will report at the Factory floor, carry out the work allotted to you and produce as per the Industrial Engineering Standards and will not indulge in intimidation, coercion of fellow workmen, sabotage, create scare in the - minds of the workmen and unauthorised movement inside the premises.”

6.1. Therefore, it is very clear that the allegation of a sit-in strike and preventing other loyal workers when these workers went on strike, along with the allegations of vandalism and other misconduct, was mentioned in the notice. However, the Management chose not to hear the Workman or give any opportunity to the Workman. It states that given the misconduct, it has become difficult to employ them and therefore unless they give an undertaking of good behaviour, they will not be let in. The present Workman did not give an undertaking and ultimately, they were dismissed thus it is clear that it is only for the said misconduct for which Workman was never heard and no principles of natural justice were complied with, they were terminated from service. Clause 27



of the Standing Orders of the Management clearly says that it would be subject to

other laws. Therefore, when the law is very well settled that in respect of misconduct, without hearing the Workman and conducting the domestic enquiry, the person cannot be terminated, then invoking Clause 27 is only a subterfuge to overcome the said exercise. For better appreciation, Clause 27 is extracted hereunder:-

“27. Termination of Service

to the provisions of any law for the time being in force the employment of any workmen may be terminated for a reasonable cause. The reasons for the termination shall be recorded in writing and shall be communicated to the workman at the time of termination.

Subject to the provisions of any law for the time being in force the employment of any workman may be terminated by either party in accordance with the terms and conditions of the appointment order either with or without notice. In the event of without notice, by paying wages (basic + D.A.) in lieu of notice. However no notice shall be necessary in the case of a casual workman, temporary workman and apprentices.

Where the terms and conditions of appointment order does not specify notice period to be given by either party it shall be 14 days of wages (basic + D.A) in lieu thereof. If a workman draws wages on piece rate basis 14 days or 30 days wages as the case may be, shall be computed on the average daily earnings of such work for the days worked by him during the previous wage period.

During the notice period no leave of any kind will be sanctioned and the workman should be available for work. Leave at credit will not be adjusted against notice period. If on exceptional grounds of sickness, leave is granted, such number of days will have to be worked over and above the expiry of notice period.



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The employment of any workman shall be liable for termination on the following among other grounds: -

(i) Insanity, senility, physical infirmity, contagious or infectious diseases, continued ill health, medical unfitness for employment with the company as declared by the company's doctor.

(Ii) insolvency

(Iii) conviction by any ordinary criminal court

(Iv) engaging in any vocation outside that of the company without the written permission of the manager or found to have been working else where during the period of leave or off duty.

(V) Loss of confidence by the company in a workman holding a position of trust or confidence and any other reasonable cause

(Vi) Absence by a workman on grounds of sickness for continuous period of 12 months or more if suffering from tuberculosis, leprosy, mental or malignant diseases or fracture of lower extremity and six months or more if suffering from any other ailment.

If a workmen absents himself without obtaining leave for more than 8 consecutive days he would be deemed to she's voluntarily abandoned his employment on his own accord without notice thereby terminating his contract of service voluntarily and automatically. Any workman who leaves the company's service in this manner shall have no claim for re-employment in the company.

In case of retrenchment and closure under the Industrial Disputes act, 1947 the provisions of the said act shall apply. No such notice shall be necessary in the case of temporary casual, contract workman and apprentices."

6.2. If the Management contends that there is no misconduct, then, again, if a good conduct bond was insisted upon a person who went on a lawful strike, the same is an unfair labour practice under Entry 8 of the V Schedule of the ID Act. Therefore, the unfair labour practice cannot be a reasonable cause under Clause 27. Clause 27 also enumerates certain circumstances under which reasonable



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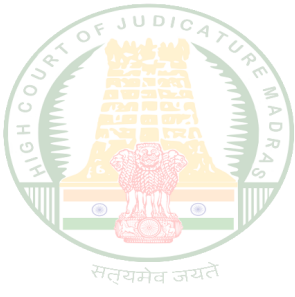
cause can be inferred.

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6.3. In any event, in this case, it is clear and categorical that the undertaking was asked for only after alleging the misconduct. The undertaking was for not taking action and continuing the employment. Since the undertaking was not given, the Workmen were terminated, and therefore, the only inference that could be drawn is that the order of termination is punitive in nature for the misconduct that was alleged. The argument to the contrary that it is not for the misconduct is rejected.

6.4. The foundation of the termination is the misconduct which was mentioned in the notice dated 22.09.1992. The said notice was not only referred to but also was enclosed along with the termination order. In this regard, useful reference can be made to paragraph No.37 of the Judgment of the Hon'ble Supreme Court of India in ***Dipti Prakash Banerjee's case*** (cited supra), which reads as follows:

“37. On this point, therefore, we hold that the words amounting to “stigma” need not be contained in the order of termination but may also be contained in an order or proceeding



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referred to in the order of termination or in an annexure thereto and would vitiate the order of termination. Point 3 is decided accordingly.”

6.5. Thus, the earlier notice was annexed to the impugned order and the reasons are clearly stated which causes stigma. Therefore, I hold that the present termination invoking Clause 27 is not justified and is not a termination simpliciter but it is only punitive in nature. Accordingly, I answer the question.

G.Question No.(ii):

7. In this case, originally it is stated that individual lockouts were announced in respect of 71 Workmen who did not furnish the undertaking and the same was pending from the year 1994. On 22.12.1995, the office bearers of the trade union filed a memo seeking to withdraw the industrial dispute. On 07.10.1996, a memo was rejected by the Industrial Tribunal. Thus, on the date i.e., 06.12.1996 when the present petitioners were terminated, the industrial dispute was very much pending. Subsequently, on 03.06.1999, the Writ Petition was allowed in W.P.No.975 of 1997 and it is essential to extract paragraph No.11, which reads as follows:-

“....In such circumstances, I am of the firm view that it is rightly contended by the Petitioner Union that once endorsement



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was made by the petitioner Union he would have no more jurisdiction to proceed with the matter as the Individual workmen do not come into the picture in a collective dispute and that the rejection to withdraw the dispute would affect Industrial peace and tranquillity as unnecessary and unwarranted dispute and litigation between the Petitioner and the Respondent Management are Pending.”

7.1. In the Writ Appeal, by an order dated 17.08.2009, the following observations were made in paragraph No.16 and finally the Writ Appeal was disposed of on the following terms and it is essential to extract paragraphs No.16 and 19, which read as follows:-

“16. Since from the above referred judgment, it is clear that fraud vitiates everything and there is no complete bar on the individual workman, whose rights are at stake, to continue the dispute before the Tribunal, we have no hesitation to hold that in such circumstances of fraud played by the Union, the individual workers can very well come into picture to save their rights and to fight for the same, and can very well proceed with the dispute, originally raised by the Union. The legal question involved in the above matters is answered, thus, in favour of the workmen, confirming the view taken by the Tribunal and setting aside the contra observations made by the learned single Judge in W.P. No. 975 of 1996.

.....
.....

19. Since I.D.No.11 of 1994 has already been dismissed by the Tribunal on 28.7.1999, after the judgment of the learned single Judge in W.P.No.975 of 1996, nothing remains to be adjudicated in I.D.No.11 of 1994, as of now. Even though at the time of admission of W.A.No.1518 of 1999, an order of stay was passed on 18.8.1999, since the same came to be passed only after the dismissal of I.D.No.11 of 1994 on 28.7.1999, the said stay order has no help to the case of the individual workmen. Therefore, since the main case in I.D.No.11 of 1994 itself has been dismissed by the Tribunal, virtually, both these writ appeals became infructuous. However, it is made clear that the individual workmen can very



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well work out their legal remedies available to them, if they are so advised, since even a new cause of action has arisen for them. With the above observations, both these writ appeals are disposed of. No costs. Consequently, C.M.P.No.13602 of 1999 is closed.

7.2. As against the same when Special Leave Petition in S.L.P.No.23840 of 2010 was preferred. While the order was confirmed, the observations were expunged. The order of the Hon'ble Supreme Court of India is extracted hereunder:-

“Having perused the records of the case, we are of the opinion that the judgment and order passed by the High Court requires no interference. However, we opine that certain statements/remarks made by the High Court while disposing of the Writ Appeal requires to be expunged and accordingly they are expunged from the body of the impugned judgment and insofar as other reliefs granted to the workmen are concerned, the same stands confirmed. The Special Leave Petition is disposed of accordingly.”

7.3. Thus, a cumulative reading of all the three orders it can be seen that originally the prayer of the union was not acceded to by the Industrial Tribunal. However, in the order of the Writ Petition it was held that once the endorsement is made, the proceedings should not be continued. After the order dated 28.07.1999, the industrial dispute was dismissed as withdrawn. In the Writ Appeal, the said fact was recorded and the Writ Appeal was dismissed as having become infructuous while giving liberty to the individual Workman. The



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observations made in paragraph No.16, on merits about the order of the Writ Petition also was expunged by the Hon'ble Supreme Court of India.

7.4 In this background, it can be seen that only on 28.07.1999, the award was passed. In this connection, it is essential to advert to Sections 17 A and 20 (3) of the ID Act which reads as follows:-

“17A. Commencement of the award.--(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17:

Provided that--

..... “

“20. Commencement and conclusion of proceedings.

(3) Proceedings before an arbitrator under section 10-A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under section 17-A .”

7.5. Thus, the statute itself leaves no doubt whatsoever regarding the commencement and conclusion of the proceedings. The matter is no longer *res integra*. A Division Bench of this Court in *Arasu Viraivu Pokkuvarathu Oozhiyar Sangam -Vs- State Express Transport Corporation, Ltd.*⁹, had considered the same in detail and held as follows:-

9 (2006) SCC OnLine Mad 335



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“10. At this stage, it is necessary to refer to S. 20(2) of the Act, which is relevant for the purpose of this appeal and the provisions of S. 20 are as follows:

20. Commencement and conclusion of proceedings.— (1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lockout under S. 22 is received by the Conciliation Officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded:

(a) where a settlement is arrived at, when a memorandum of settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at when the report of the Conciliation Officer is received by the appropriate Government or when the report of the Board is published under S. 17, as the case may be; or

(c) when a reference is made to a Court (Labour Court, Tribunal or National Tribunal) under S. 10 during the pendency of conciliation proceedings.

On a perusal of the above said provisions, it is seen that Sub-sec. (1) fixes the date of commencement of conciliation proceeding as the date on which a notice of strike or lock out under S. 22 is received by the Conciliation Officer. As far as the non-public utility undertaking are concerned, the conciliation proceeding shall be deemed to have commenced on the date of the order referring the dispute to a Board. The provisions of Sub-sec. (2) apply to all conciliation proceedings, whether in regard to public utility service or otherwise. A conciliation proceeding under this sub-section shall be deemed to have concluded in the manner aforesaid. The conciliation proceeding therefore do not end when the report under S. 12(4) is submitted by the Conciliation Officer, but it ends when that report is received by an appropriate Government. The word “received” in Sub-sec. 2(b) obviously implies actual receipt of the report by the appropriate Government where no settlement is arrived at.

11. In Lokmat Newspapers (Private), Ltd. v. Shankarprasad, [1999



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(3) L.L.N. 538], the provisions of S. 20(2) fell for consideration of a Division Bench of the Supreme Court. The Supreme Court observed as follows, in Para. 28, at page 549:

“A mere look at the aforesaid provisions shows that in cases of public utility services referred to in S. 22(2) of the I.D. Act, the conciliation proceedings shall be deemed to have commenced on the date on which a notice of strike or lockout under S. 22 is received by the Conciliation Officer. That deals with commencement of mandatory conciliation proceedings as laid down by S. 12(1) read with S. 20(1). But, when we come to S. 20(2), it becomes obvious that the Legislature has introduced by way of legal fiction an irrebuttable presumption as per Sub-cl. (b) of S. 20(2) that when during conciliation proceedings no settlement is arrived at between the parties, the conciliation proceedings shall be deemed to have concluded when the failure report of the Conciliation Officer is received by the appropriate Government. Consequently, the legislative intention becomes clear that conciliation proceedings initiated under S. 12(1) whether of a discretionary nature or of a mandatory nature shall be treated to have continued and only to have concluded when the failure report reaches the appropriate Government. As noticed earlier, it is not in dispute between the parties that after the closure of investigation on 22 June, 1982 when the conciliator sent the failure report, it reached the State Government only on 13 August, 1982. Therefore, it has to be held that the conciliation proceedings in the present case had not got terminated and got concluded only on 13 August, 1982 as per the aforesaid category presumption created by the legal fiction provided in S. 20(2)(b). Therefore, as a necessary corollary, it must be held that these conciliation proceedings were pending till 13 August, 1982. It is axiomatic that conciliation proceedings which are deemed not to have concluded must be deemed to have continued or remained pending. That which is not concluded is pending, equally that which is pending cannot be said to be concluded.”

(emphasis supplied.)

The Supreme Court further observed as follows, in Para. 30, at pages 550 to 552

“We fail to appreciate how this decision can be pressed in service by learned counsel for the appellant while construing S. 20(2) of



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the I.D. Act. That section, as noted earlier, has created an irrebuttable presumption by way of legal fiction and that presumption covers the very question as to when conciliation proceedings once commenced can be said to have concluded. In other words, when they can be said to have not remained in pending. As seen earlier, the legal fiction which is created for that purpose by S. 20(2) has to be given its full effect. As it is well-settled while giving effect to the legal fiction for the purpose for which it is created by legislature it has to be given full play for fructifying the said legislative intention. We cannot allow our imagination to boggle on that score. It is, of course, true as laid down by the Constitution Bench of this Court in the case of Bengal Immunity Company, Ltd. v. State of Bihar, [A.I.R. 1955 S.C. 661]. Das, Acting C.J., speaking for the Court in Para. 31 of the report, made the following pertinent observations:

‘Legal fictions are created only for some definite purpose.

xxx

a legal fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field.’

However, as noted earlier, legal fiction created by S. 20(2) is for the purpose of laying down as to till what stage conciliation proceedings can be said to be pending and when they can be said to have concluded. On that basis, if it is held that conciliation proceedings once validly started under S. 12(1) of the I.D. Act can by way of an irrevocable presumption be treated to have continued till the failure report reached the appropriate Government, during the inter regnum of necessity such conciliation proceedings have to be treated as pending before the Conciliation Officer. In fact, on these aspects of the matter, we have a decision of this Court in Andheri Marol Kurla Bus Service v. State of Bombay, [A.I.R. 1959 S.C. 841]. In that case, a Bench of two-Judges of this Court had to consider the question as to when conciliation proceedings can be said to have concluded under the relevant provisions of this very Act. In that case during the admitted pendency of conciliation proceedings the management had dismissed the workman bus conductor. However, the submission on the part of the management was that such dismissal was after the expiry of statutory period of 14 days within which the conciliation proceedings once started had to be concluded and as 14 days were



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already over the dismissal did not attract S. 33(1) and consequently, the management could not be penalised under S. 31(1) of the I.D. Act which lays down as under:

‘Any employer who contravenes the provisions of S. 33 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.’

In the aforesaid factual matrix of the case, this Court in *Andheri Marol Kurla Bus Service v. State of Bombay* (vide supra), had to consider the scope of S. 33(1) read with S. 20(2)(b). On a conjoint reading of these relevant provisions at Paras. 4 and 5 of the report, J.L. Kapur, J., speaking for the Court, made the following pertinent observations:

‘The provisions of Sub-sec. 20(2) apply to all conciliation proceedings whether in regard to utility services or otherwise. All conciliation proceedings under this sub-section shall be deemed to have concluded in the case where no settlement is reached, when the report of the Conciliation Officer is received by the appropriate Government. The conciliation proceedings therefore do not end when the report under S. 12(6) is made by the Conciliation Officer, but when that report is received by the appropriate Government. It was contended that the conciliation proceedings should be held to terminate when the Conciliation Officer is required under S. 12(6) of the Act to submit his report but the provisions of the Act above quoted do not support this contention ‘as the termination of the conciliation proceedings is deemed to take place when the report is received by the appropriate Government.’ That is how S. 20(b) was interpreted in *Workers of the Industry Colliery, Dhanbad v. Management of Industry Colliery*, [A.I.R. 1953 S.C. 88].

It was next contended that on this interpretation, the conciliation proceedings could be prolonged much beyond what was contemplated by the Act and the termination would depend upon how soon a report is received by the appropriate Government. It is true that S. 12(6) of the Act contemplates the submission of the report by the Conciliation Officer within 14 days but that does not affect the pendency of the conciliation proceedings and if for some reason the Conciliation Officer delays the submission of his report his action may be reprehensible but that will not affect the interpretation to be put on S. 20(2)(b) of the Act. Section 12 lays



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down the duties of the Conciliation Officer. He is required to bring about settlement between the parties and must begin his investigation without delay and if no settlement is arrived at he is to submit his report to the appropriate Government. No doubt, S. 12 contemplates that the report should be made and the proceedings closed within a fortnight and if proceedings are not closed but are carried on, as they were in the present case, or if the Conciliation Officer does not make his report within a 14 days he may be guilty of a breach of duty but in law the proceedings do not automatically come to an end after 14 days but only terminate as provided in S. 20(2)(b) of the Act. *Colliery Mazdoor Congress, Asansol v. New Beerbhoomi Coal Company, Ltd.*, [1952 L.A.C. 219 (222)].’

The aforesaid decision, therefore, has settled controversy on this aspect by holding that conciliation proceedings would terminate only as provided by S. 20(2)(b) of the Act. Meaning thereby, till the failure report reaches the appropriate State Government, conciliation proceedings cannot be said to have terminated. Hence, breach S. 33(1) during the pendency of such proceedings could attract penal liability of the employer under S. 31(1) of the Act. Learned counsel for the appellant tried to submit that the aforesaid decision had not considered the legal effect of the fiction created by S. 20(2)(b) and its limited scope regarding deemed conclusion of the conciliation proceedings which was different from actual pendency of the proceedings as required by S. 33(1). It is difficult to appreciate this contention for the simple reason that the relevant provisions of the Act to which our attention was drawn by learned counsel for the appellant for submitting that there was a difference between pendency and conclusion of proceedings do not advance the case of the appellant, as we have seen earlier, nor can it be said that any relevant provisions of the Act were not noticed by the Division Bench of this Court which decided the case referred to in *Andheri Marol Kurla Bus Service v. State of Bombay* (vide supra).

(emphasis supplied)

This extract is taken from *Arasu Viraivu Pokkuvvarathu Oozhiyar Sangam v. State Express Transport Corporation, Ltd.*, 2006 SCC OnLine Mad 335 : (2006) 3 LLN 916 : (2006) 3 LLJ 245 at page 923

12. In view of the clear pronouncement of law by the Supreme Court, there is no escape from the conclusion that when the order of reversion was passed against the workmen, the



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respondent/management had committed breach of S. 33(1) of the Act by not passing the said order after obtaining the express previous permission in writing of the Conciliation Officer before whom the conciliation proceedings must be held to be pending till his report was forwarded to the State Government on 14 October, 2005. The impugned retrenchment order must, therefore, be held to be illegal, being contrary to the provisions of the Industrial Disputes Act.”

7.6. Thus, as far as the pendency of the conciliation proceedings or the industrial dispute is concerned, it has categorically been held by the Hon'ble Supreme Court of India that the Act creates legal fiction about the pendency of the proceedings and only from the date on which the award became enforceable, the proceedings come to an end. It is not the action of filing a withdrawal memo or passing of the order by the High Court that is relevant. The award was passed only on 28/07/1999, and thus, as per the Act, the industrial dispute shall be deemed to be pending. It was pending as of 06.12.1996, the date of termination of the Workmen herein. Accordingly, I answer the question.

H.Question No.(iii):

8. It is true that if it is a case of termination simpliciter, the same would not attract Section 33. The said position has been laid down by the Hon'ble Supreme Court of India in *Mahendra Singh Dhantwal's case* (cited supra) and paragraph



No.33 is extracted hereunder :

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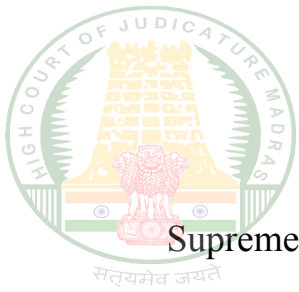
“33. It is, however, unexceptionable that if an employer passes an order of termination of service in exercise of his right under a contract or in accordance with the provision of the standing orders and the tribunal finds that the order is not on account of any misconduct, the question of violation of Section 33 would not arise.”

But in this case, already I have found that the termination is punitive in nature.

Once it is punitive, the matter is no longer *res integra* and has been answered by the Hon'ble Supreme Court of India in ***Mahendra Singh Dhantwal's case*** (cited supra) and paragraph No.25 of the said Judgment is extracted hereunder:-

“25. Termination simpliciter or automatic termination of service under the conditions of service or under the standing orders is outside the scope of Section 33 of the Act. This does not mean that the employer has the last word about the termination of service of an employee and can get away with it by describing it to be a simple termination in his letter of discharge addressed to the employee. It is also not a correct proposition of law that in case of a complaint under Section 33-A the tribunal would be debarred from going into the question whether notwithstanding the form of the order, in substance, it is an action of dismissal for misconduct and not termination simpliciter.”

8.1. Therefore, once the Court finds that it is punitive in nature, the Management cannot get away with the same without prior permission under Section 33 of the Act. The fact that the Workmen were directly involved in the pending industrial dispute and that the termination was also with reference to the same matter cannot even be disputed. Therefore, the impugned termination is void. In this regard, the legal position has been made clear by the Hon'ble



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Supreme Court of India in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v.*

Ram Gopal Sharma¹⁰, more specifically paragraphs Nos. 13 to 15 of the Judgment. Therefore, I hold that the action of the Management is in violation of Section 33 of the Act.

I. Question No.(iv):

9. It is true that the award was passed on 15.04.2004, and the Writ Petition was filed on 20.12.2006. It should be seen that the award was published and thereafter, copies were furnished. Considering the fact that the Workmen were not in employment from the year 1992 and the award was passed in the year 2004, the delay of about 2 years cannot be held to be fatal. The matter has to be looked into from the point of industrial adjudication and the background and the plight in which the Workmen are in. However, since the Workmen had delayed the filing of the Writ Petition while granting the relief, the said period can be taken into account as by filing the Writ Petition belatedly, the entire back wages, etc, cannot be claimed by the Workman. However, the delay is not such that as to non-suit the Workman in toto.

¹⁰ (2002) 2 SCC 244



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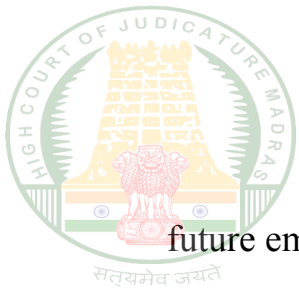
J. Question No.(v):

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10. In this case, originally the lockout was in the year 1992. The termination was in the year 1996. Now, we are in 2025. All three petitioners have also reached the age of superannuation. Therefore, this is not a case where reinstatement with back wages could be ordered and I am of the view that this is a fit case where compensation in *lieu* of all the claims of reinstatement and back wages and all other claims can be ordered. The Workman – *Narasimhan* was receiving Rs.3,656/- as the last drawn wages, the Workman – *Subramaniam* was receiving Rs.3,471/- and the 3rd Workman – *Govindudu* was receiving a sum of Rs.3,652/- as the last drawn wages. Therefore, taking the average of their monthly salary as Rs.3,500/- per month. The principle followed in the Judgment of the ***O.P.Bhandari -Vs- Indian Tourism Development Corporation Ltd., and others***¹¹ is that at least the Workman should be in a position to receive 50% of the last drawn wages by way of interest income if the compensation is deposited in the bank and in that view of the matter, the Hon'ble Supreme Court ordered that at least 39 months wages would represent fair compensation. In the ***Workmen -Vs- Bharat Fritz Werner Private Limited and another***¹², the Hon'ble Supreme Court of India had also ordered that such additions be made towards the loss of

¹¹ (1986) 4 SCC 337

¹² (1990) 3 SCC 565



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future employment.

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10.1 Thus, considering the overall facts and circumstances of the case, I am of the view that it would be just and fair to award Rs.5 Lakhs to each of the three petitioners / Workmen.

K.The Result:

11. In the result, the Writ Petition No.1655 of 2007 is allowed on the following terms:-

(i). The award of the Labour Court dated 23.03.2004 made in Complaint Nos.38, 39 and 42 of 1997 shall stand set aside. The complaints are partly allowed;

(ii) The non-employment of the three petitioners – Workmen viz., *Narasimhan, T.Subramaniam* and *M.Govindudu* are held to be unjustified;

(iii) In lieu of reinstatement with back wages and all other claims, the 2nd respondent – Management is directed to pay a sum of Rs.5 Lakhs each to the aforesaid three petitioners – Workmen;

(iv) The said sum is payable within twelve weeks from the date of receipt of a website-uploaded copy of this order, without waiting for the certified copy of



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the order

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(v) If the said sum is not paid within the above said period, thereafter it shall be paid with further interest at the rate of 9% per annum from today.

(vi) No costs.

04.02.2025

Neutral citation: Yes

Jer

To
The Industrial Tribunal
High Court Buildings
Chennai – 600 104.



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D.BHARATHA CHAKRAVARTHY, J.,

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