



2025:DHC:9040



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 06.10.2025

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W.P.(C) 11883/2019**SIJU THOMAS**

.....Petitioner

Through: Mr. Jose Abraham, Mr. Basil Jaison,
Mr. George Daniel George, Advocate

versus

**BATRA HOSPITAL AND MEDICAL
RESEARCH CENTRE**

.....Respondent

Through: Mr. Anil Bhat, Mr. Vivek P. Gupta,
Mr. Ashish Kumar Ojha, Advs.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The grievance of the Petitioner/Workman as articulated in the present Petition is in respect of an Award dated 24.04.2019 passed by the learned POIT-02, Industrial Tribunal-02, Dwarka Courts, New Delhi [hereinafter referred to as the 'Impugned Award'].
2. By the Impugned Award, an Application under Section 33(2) of the Industrial Disputes Act, [hereinafter referred to as the 'Act'] as filed by the Respondent/Management, was disposed of with a finding that since there were no earlier proceedings pending, no permission under the provision was requisite.
3. The challenge by the Petitioner/Workman in these proceedings is to the Impugned Award. It is the case of the Petitioner/Workman that permission of the Court was required to be taken prior to the termination of the Petitioner/Workman. The undisputed facts of the case are that the Petitioner/Workman was terminated from the services of the Respondent on 26.03.2011. Pursuant thereto, on 28.03.2011, an Application was filed by the



Respondent/Management seeking approval of the action taken that is the termination of the Petitioner/Workman from the services of the Respondent Company [hereinafter referred to as “Application”]. It was stated in the Application that an industrial dispute bearing ID No. 186/2010 was filed by some workmen against the Respondent/Management, however, it was not clear as to whether the Petitioner/Workman is connected with such industrial dispute and thus by way of abundant caution, the Respondent/Management has filed the Application seeking approval of the authority for removal/termination of the said Workman.

3.1 A Reply was filed to this Application by the Petitioner/Workman wherein it was stated that the although the Petitioner/Workman has been terminated illegally, he has not raised any industrial dispute in this regard.

4. The learned Tribunal examined the record and found that the Respondent/Management had filed the Application by way of abundant caution, however, the Petitioner/Workman was not a party to the industrial dispute bearing ID No. 186/2010 which was pending between some workmen of the Respondent Hospital and the Hospital. The only objection taken by the Petitioner/Workman before the Tribunal was that the Application was required to be filed for permission prior to the Petitioner/Workman’s termination.

4.1 The learned Tribunal found that the provisions of Section 33(2) of the Act were inapplicable to the Petitioner/Workman and thus, the Respondent/Management was not required to take any prior permission under the statute and disposed of the Application, directing that the Application was not required to be filed.

5. Section 33(1) of the Act provides that conditions of employment of a



workman shall not be altered and shall remain unchanged during the pendency of an industrial dispute between the parties. Sub section (2) of the Section 33 of the Act sets out that the terms and conditions of services may be altered during the pendency of an Industrial dispute between the parties or a Workman can be dismissed during the pendency of such dispute, provided that the terms of the applicable contract between the parties are taken into consideration and approval of the authority before whom the where the industrial dispute is pending is taken, in the following terms:

*“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 3[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.”

[Emphasis supplied]

5.1 The provision as stated above, provides that where during the pendency of any proceedings in respect of an industrial dispute, the Management (a) may not alter the service conditions in matters not connected with the dispute, applicable immediately before the commencement of such proceedings or (b) for any misconduct, discharge, punish or dismiss the workman, unless the permission is taken of the Labour Court/Authority concerned.

6. The *sine qua non* for the applicability of this provision is the pendency of an industrial dispute.

7. The learned Counsel for the Petitioner/Workman however submits that he has not filed any proceedings before the learned Labour Court challenging his dismissal on 28.03.2011.

8. A perusal of the Impugned Award, also sets out that the issue as to whether the Petitioner/Workman was a party to ID No. 186/2010 was raised before the learned Tribunal. The learned Tribunal however examined the record and held that in the evidence as well as the reply filed by the Workman, he has specifically mentioned that he has no concern with the industrial dispute bearing ID No. 186/2010 as pending before the Workman as well as the Management. It is relevant to extract the relevant portion of the Impugned Award in this behalf:-

“11. Present Approval application has been filed by the management u/s 33 (2) of the Industrial Disputes Act on the ground that an Industrial Dispute bearing ID No 186/2010 was pending between the parties. Although, in the Approval application, management has stated that it is not clear whether the present workman had any relation with ID No 186/2010 or not but, by way of abundant precaution, they have filed the present Approval Application. Before considering the relief claimed by the



management by way of present Approval Application, It is necessary to consider the provision of section 33 of the Industrial Disputes Act;

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15. In the evidence as well as in the reply filed by the workman, he had specifically mentioned that he has no concern with the industrial dispute bearing ID No. 186/10 as pending between some workmen of Batra Hospital and Management of Batra Hospital. Once, it has been categorically admitted by the workman that there was no earlier proceedings in respect to any industrial dispute pending between the management and workman, I am of the opinion that section 33 of the Industrial Disputes Act does not apply. Once, it is held that section 33 of Industrial Disputes Act was not attracted in the present circumstances, as there was no previous proceedings pending between the present workman and the management, therefore, in my considered opinion, there was no requirement for management to seek approval of the action taken against the workman.

16. In view of my above discussion, the approval application u/s 33 (2) of Industrial Dispute Act as filed by management stands disposed off as it was not required to be filed by management, as there was no earlier proceedings pending between the present workman and the management. Award is passed accordingly. Copy of the award be sent to Govt of NCT of Delhi for publication. File be consigned to record room."

[Emphasis Supplied]

9. It is settled law that while examining the Petitions filed challenging orders of the Labour Court, this Court does not sit as an Appellate Court. All that the Court is required to do is to see whether the jurisdiction has been exercised in accordance with law by the Labour Court. The Supreme Court in the case of *Syed Yakoob v. K.S. Radhakrishnan & Ors.*¹ held that the Court exercises supervisory jurisdiction and the High Court is not to reappreciate all the facts and evidence as an appellate court. The relevant extract is set out below:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction

¹ 1963 SCC OnLine SC 24



committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. **There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.** In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, **the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law** which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. **The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.** It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque* [(1955) 1 SCR 1104] *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* [(1958) SCR 1240] and *Kaushalya Devi v. Bachittar Singh* [AIR 1960 SC 1168])”

[Emphasis Supplied]

10. A review of the cross-examination dated 18.08.2018 of the Petitioner/Workman reflects that he has no concern with the industrial dispute bearing ID No. 186/2010 in relation to which the Application had been filed in the following manner:

“18.08.2018



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Statement of Sh. Siju Thomas /workman, re-called for cross examination, deferred on 12.07.2018.

On S.A.

XXX by Sh. Atul Tripathi, AR for the management.

*The reply filed by me to the application of the management, has been prepared on my instructions and I am aware of the contents of the same. **I have no relation/concern of any sort with the Industrial dispute no. 186/10.** Dr. S K M Rao was the NABH Assessor. I am not aware if Dr. S K M Rao has any relation or concern with the management of Batra Hospital or not. It is wrong to suggest that on 23.04.2010 when Dr S K M Rao was on inspection , I had forcefully handed over some papers to him. I did not have any appointment with Dr S K M Rao. It is wrong to suggest that by forcefully handing over some documents to Dr S K M Rao. I had created obstruction in the process of inspection. It is wrong to suggest that when Dr. Rajiv Kumar, Deputy Medical Superintendent inquired from me about the incident, I used filthy and abusive language against him....”*

[Emphasis Supplied]

11. In any event, the Petitioner/Workman has fairly conceded that although the Petitioner/Workman did have a disagreement with the Respondent/Management in the year 2010-11, no proceedings have been filed by him against the Respondent/Management till today and reiterates the fact that the Petitioner/Workman was not a party to the industrial dispute ID No. 186/2010. In view of the categorical contention of the Petitioner/Workman, the Court is unable to interdict the Impugned Award.

12. The Petition is, accordingly, dismissed.

13. The Petitioner/Workman is, however, at liberty to take appropriate steps *albeit* in accordance with law for redressal of his grievances, if any remain before the appropriate forum.

14. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

OCTOBER 6, 2025/SU/g.joshi