IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF FEBRUARY, 2023

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BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 28177 OF 2009 (L-TER)

BETWEEN:

MULBERRY SILKS LTD
(FORMERLY KNOWN AS
M/S MULBERRY SILK INTERNATIONAL LTD)
NO.251-B, III PHASE
BOMMASANDRA INDUSTRIAL AREA
BANGALORE-562158

REPRESENTED BY ITS
ASSISTANT GENERAL MANAGER
MR. DINESH MATHUR

...PETITIONER

(BY SRI. K.R. ANAND, ADVOCATE)

AND:

SRI. N.G. CHOWDAPPA
S/O SRI. N. GANGAPPA
C/O SRI. J. THOMAS
ADIGODANAHALLI
MUTHANALUR POST
ANEKAL TALUK
BANGALORE-562158

... RESPONDENT

(BY SRI. K.S. SUBRAMANYA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI AND/OR ANY OTHER WRIT OR ORDER AND QUASH THE IMPUGNED ORDER DATED 27.8.2009 VIDE ANNEXURE-E TO THIS WRIT PETITION. PASSED IN APPLICATION NO.1/2004 BY THE HON'BLE II ADDL. LABOUR COURT, BANGALORE.

THIS WRIT PETITION COMING ON FOR FURTHER HEARING AND HAVING BEEN RESERVED FOR ORDERS ON 3.09.2022, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

> *"The petitioner in the circumstances stated above, humbly pray that this Hon'ble Court may be pleased to issue a writ in the nature of certiorari and/or any other writ or order and quash the impugned order dated 27.8.2009 vide Annexure-'E' to this writ petition passed in Application No.1/2004 by the Hon'ble II Addl. Labour Court, Bangalore".*

2. The petitioner is a company carrying on the business of manufacturing of silk fabrics from the year 1996. On 24.07.2002, a domestic enquiry was held in which the respondent was found guilty of misconduct and his services came to be dismissed vide order dated 06.08.2003. The respondent along with four others filed an application No.1/2004 under Section 33(C)(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') claiming full wages from the date of dismissal till filing of the application. The objections were filed.

3. During the pendency of the application, four workmen except the respondent settled their claim with the petitioner vide a settlement agreement dated 10.04.2008. As such application No.1/2004 referred to supra continued only in respect of respondent No.1-workman is concerned. After recording evidence, and hearing arguments, the Labour Court vide its order dated 27.08.2009 allowed the application. It is aggrieved by the same, the petitioner - employer is before this Court seeking for the aforesaid reliefs.

4. Sri.K.R.Anand, learned counsel for the petitioner would submit that:

4.1. The disputes as regards four other workmen having been settled vide Settlement Deed dated 10.04.2008 and the Union also having agreed to the said settlement, the respondent also ought to have agreed to the same and only in the event of the petitioner refusing

employment, then the respondent would be justified in demanding full wages. The petitioner had never prevented the respondent from reporting to work. Infact, the respondent had also offered similar terms as that offered to other workmen for the purpose of settlement. It is the respondent who has not agreed to the settlement and without working with an intention of earning full wages has refused the settlement and continued the proceedings.

4.2. At no point of time, had the respondent reported to work or the petitioner refused employment, which has not been considered by the Labour Court. The Labour Court has exceeded its powers vested in it under Section 33(C)(2) of the Act and has passed the impugned order without properly understanding the position of law. The decision which had been referred to and relied upon by the Labour

Court has not been properly understood by the Labour Court resulting in the impugned award. The law applied not being proper, the impugned order is required to be set aside.

4.3. A common grievance having been raised under Section 33(C)(2) of the Act, once the other workman had agreed for a settlement, what remains was an individual dispute of the respondent and without a reference being made under Section 10(4)(a) of the Act, a dispute of an individual workman could not have been considered by the Labour Court under Section 33(C)(2) of the Act.

4.4. The proceedings under Section 33(c)(2) of the Act would not apply to an individual workman. It is only, if a reference order was made as regards the disputes raised after conciliation proceedings having failed that the aspect of

backwages could be considered insofar as lone workman- respondent is concerned.

4.5. He relies upon the following decisions:

4.6. ***Karnataka State Road Transport Corporation vs. C.V. Venkataravana***[1]

> *23. Analysis of the factual aspects of the case that respondent-workman was dismissed from service and the management in not invoking Section 33(2)(b) of the I.D. Act does not give any right to the respondent-workman to submit application under Section 33C(2) of the I.D.Act. Without compliance to the ingredients of the said provision, application under Section 33C(2) of the I.D Act is not maintainable as held by various Courts cited supra. In order to entertain application under Section 33C(2) of the I.D.Act, the ingredients under the said provision were required to be examined. The Hon'ble Supreme Court in the case of Ganesh Razak (supra) concluded that ratio of decision clearly indicates that where the very basis of the claim or entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33C(2) of the I.D. Act and the Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33C(2) of the I.D. Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33C(2) of the I.D. Act like that of Executing Court's power to interpret the decree*

[1] WP No.24649/2016 dated 16.04.2021

for the purpose of its execution which is evident from para.12 of the Judgment in Ganesh Razak's case (supra). As on the date of submission of application under Section 33C(2) of the I.D.Act by the respondent-workman, he ceased to be an employee/workman. Consequently, application filed under Section 33C(2) of the I.D.Act is not maintainable before the Labour Court and it has no vested jurisdiction. Hence, the following:

ORDER

The Labour Court has committed manifest error in entertaining application filed by the respondent-workman under Section 33C(2) of the I.D.Act. Therefore, order dated 24.11.2015 passed by the III Additional Labour Court, Bengaluru in Application No.9/2014 vide Annexure-F stands set aside. Accordingly, writ petition stands allowed.

4.7. ***The KCP Ltd Vs. The Presiding Officer & Ors.***[2]

21. It is also not in dispute that parties to the settlement were the appellant company on the one hand and respondent No. 2 - union on the other, which acted on behalf of all the 29 dismissed workmen for whom reference was pending in the Labour Court. It was duly signed by both these parties. Under these circumstances, respondent Nos. 3 to 14 also would be ordinarily bound by this settlement entered into by their representative union with the company unless it is shown that the said settlement was ex-facie, unfair, unjust or malafied. No such case could be even alleged much less made out by the dissenting respondent Nos. 3 to 14 before the trial court. It is interesting to note that before the Labour Court the only argument put forward on behalf of the respondent Nos 3 to 14 was that they were not parties to the settlement and therefore, it was not binding on them. Once it is kept in view that the entire industrial dispute was raised by respondent No. 2 union on behalf of all the 29 dismissed workmen and as it was not an

[2] 1996 (10) SCC 446

industrial dispute covered by Section 2A whereunder individual dismissed workman could come in the arena of contest, it could not be held, as wrongly assumed by the Labour Court that this settlement was not entered into under Section 18(1) of the Act by these dissenting workmen when the respondent - union did represent then from beginning to end and is still representing them as they are members of the union even at present. In the case of Ram Prasad Vishwakarma vs. The Chairman Industrial Tribunal 1961 (3) SCR 196 a Bench of three Hon'ble Judges of this Court had an occasion to consider the effect of a settlement entered into by the union of workmen which had espoused the cause of its members by raising an industrial dispute under section 2(k) of the Act and further question whether under these circumstances an individual workman had any independent locus standi in proceedings before the reference court. Rejecting the contention on behalf of the individual workman, it was observed by Das Gupta, J. speaking for the court that the concerned workman was not entitled to separate representation when already represented by the Secretary of the union which espoused his cause. A dispute between an individual workman and an employer cannot be an industrial dispute as defined in Section 2(k) of the Act unless it is taken up by a union of workmen or by a considerable number of workmen. When an individual workman becomes a party to a dispute under the Act he is a party, not independently of the union which has espoused his cause. It was further observed that although no general rule can be laid down in the matter, the ordinary rule should be that representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances justifying other representation of the workman concerned.

26. As in the present case the settlement arrived at between the parties was not during conciliation proceedings, it would remain binding to the parties to the settlement as per Section 18(1) of the Act. But as we have seen above, Respondent 2-Union while entering into that settlement acted on behalf of all the 29 dismissed workmen who were its members including the present Respondents 3 to 14 who are also its members

as noted earlier. We have also seen earlier that the Labour Court had erred in taking the view that Respondents 3 to 14 were not parties to the said settlement as individually they had no locus standi and they were represented by their Union-Respondent 2 which had signed the settlement on behalf of its members for whom the dispute was raised by the Union. Nothing could be alleged by Respondents 3 to 14 to the effect that the said settlement was in any way unjust or unfair or was a maia fide one. There were no exceptional circumstances to reject this settlement qua even the contesting respondents. However, as the learned counsel for the respondent-workmen tried to faintly suggest to that effect we have carefully gone through the circumstances which are brought on record which had led to the settlement. It may be noted that about 500 workmen had gone on strike and that had resulted in the lockout by the appellant-Company and ultimately disciplinary action was initiated against 29 workmen who had indulged in various acts of misconduct. It is for these 29 workmen who were ultimately dismissed from service that the respondent-Union had raised a dispute under Section 2(k) of the Act on their behalf. Earlier the remaining workmen had gone on strike for nearly 5 months. Ultimately, the strike was withdrawn; lockout was lifted and a broad understanding was reached between the appellant-Company and the workmen represented by their union whereby it was agreed that 29 workmen, who were dismissed, would be either given Rs 75,000 as compensation or reinstatement with continuity of service without back wages and the workmen concerned should express apology for misconduct and also assure good conduct in future.

27. Out of 29 workmen for whom the industrial dispute was raised 17 workmen agreed and accepted settlement and joined the service. Remaining 12 workmen (respondent nos.3 to 14) have not agreed to the said settlement. It is under these circumstances that the settlement arrived at by the union on behalf of all of them has to be scrutinized. It has clearly transpired on the record of this case that all the 500 workmen excluding 29 dismissed workmen and had struck the work. Ultimately, when they were reinstated in service leaving aside the 29 workmen for

whom industrial dispute lingered on, all the remaining workmen lost their wages from 20.10.1990 to 21.5.1991 and also from 13.5.1991 to 6.10.1991. They lost their wages because they were expressing sympathy for their 29 colleagues who were facing disciplinary action and even for these 29 workmen respondent no.2 union entered into a settlement so that they could be reinstated in service with continuity of service or could walk out from service with Rs.75,000/- and other monetary benefits. All that was agreed to by the union as a condition for reinstatement was that the workmen would be give up back wages and had to sign a written undertaking to behave properly in future. In our view there was nothing unreasonable or unfair in these terms of settlement. The relief of reinstatement without back wages could not be said to be unreasonable as for nearly 12 months all other workmen lost their back wages only because they supported the cause of these colleagues of theirs and hence there was no reason why the workmen who indulged in the acts of misconduct and who were also to be taken in service should not lose their wages for 12 months. Relief of reinstatement was made available to respondents 3 to 14 on the same line as it was made available to their 17 remaining colleagues who were covered by the very same settlement and who accepted the relief of settlement without back wages or a lumpsum compensation of Rs.75,000/- and other monetary benefits in lieu of that. In our view such a package deal entered into by respondents no.2 in the best interest of these workmen could not be said to be unfair or unjust from any angle. On the contrary, if the back wages were given to them, then the remaining workmen against whom there was no disciplinary action or any alleged misconduct and who had also lost wages for 12 months only because they were in sympathy with these 29 dismissed workmen would have stood discriminated against. Consequently, it is not possible to agree with the learned counsel for respondents nos.13 to 14 that the said settlement was in any way unfair or unjust. Once this conclusion is reached it is obvious that the entire industrial dispute should have been disposed of in the light of this settlement and an award in terms of the settlement should have

been passed by the first respondent-court in the case of respondents 3 to 14 also. Consequently, the judgement and order of the Division Bench of the High Court dated 4th. April, 1995 and the order of the learned Single Judge dated 29th September, 1993 are quashed and set aside. The writ petition filed by the appellant company will stand allowed with a direction to the first respondent-Labour Court to pass award in terms of the settlement dated 14th December, 1992 by treating it to be binding to respondent nos. 3 to 14 also.

28. Learned Counsel for these respondents ultimately submitted that the time during which the concerned workmen had to exercise their option as per the terms of the settlement is now over and the appellant company may not make available the said option to them. His apprehension on behalf of the respondents was set at rest by learned counsel for the appellant company who stated that the appellant company is willing to make available the option to these respondent nos. 3 to 14 to either accept reinstatement with continuity of service without back wages on their executing the writing as per the said settlement or to be paid Rs.75,000/- each in addition to gratuity as per the payment of Gratuity Act, wages for unavailed leave and bonus, if any payable.

29. In view of this fair stand taken by the appellant company it is directed that if the respondent nos. 3 to 14 exercise their option as per the procedure laid down in the settlement dated 14th December 1992 either to get reinstatement without back wages for the period of non- employment and with continuity of service or to accept a lumpsum monetary compensation as laid down in the settlement within a period of 8 weeks from today, the appellant company will act upon the said option exercised by the said workmen and shall give appropriate benefit of the option as per the settlement to the concerned workmen. As the period of lumpsum payment of Rs.75,000/- by instalments (as laid down by the settlement) is already over, it is directed that if any of the concerned workmen-respondents 3 to 14 exercises the option of receiving the lumpsum amount of Rs.75,000/- in lieu of the

reinstatement, a sum of Rs.40,000/- out of the said amount shall be paid to the concerned workmen within 15 days of the exercise of such option and the balance of Rs.35,000/- with other monetary benefits as indicated in the settlement shall be paid to the concerned workmen within a further period of 2 months thereafter.

30. The appeal is allowed in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.

4.8. ***State of UP & Others vs. Brijpal Singh***[3]

10. *Thus it is clear from the principle enunciated in the above decisions that the appropriate forum where question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. Thereafter, the Labour Court, in the instant case, cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent herein which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference under Section 10 of the I.D. Act. Therefore, the Labour Court has no jurisdiction to adjudicate the claim made by the respondent herein under Section 33C(2) of the I.D. Act in an undetermined claim and until such adjudication is made by the appropriate forum, the respondent-workman cannot ask the Labour Court in an application under Section 33C(2) of the I.D. Act to disregard his dismissal as wrongful and on that basis to compute his wages. It is, therefore, impossible for us to accept the arguments of Mrs. Shymala Pappu that the respondent-workman can file application under Section 33C(2) for determination and payment of wages on the basis that he continues to be in service pursuant to the said order passed by the High Court in Writ Petition No. 15172 of 1987 dated 28.10.1987. The argument by the learned counsel for the workman has no force and is unacceptable. The Labour Court, in our opinion, has erred in allowing the application filed under Section 33C(2) of the I.D. Act and ordering payment of not only the salary but also bonus to the*

[3] 2005 (8) SCC 58

workman although he has not attended the office of the appellants after the stay order obtained by him. The Labour Court has committed a manifest error of law in passing the order in question which was rightly impugned before the High Court and erroneously dismissed by the High Court. The High Court has also equally committed a manifest error in not considering the scope of Section 33C(2) of the I.D. Act. We, therefore, have no hesitation in setting aside the order passed by the Labour Court in Misc. Case No. 11 of 1993 dated 23.8.1995 and the order dated 9.1.2002 passed by the High Court in C.M.W.P. No. 36406 of 1995 as illegal and uncalled for. We do so accordingly.

12. *The civil appeal is, accordingly, allowed and the orders passed by the Labour Court and the High Court in C.M.W.P.No. 36406 of 1995 are set aside. However, there shall be no order as to costs.*

4.9. ***Managing Director, NEKRTC Karnataka V.S Shivasharanappa***[4]

5. In the present case, the High Court interfered with the punishment merely on the ground that the requirement under Section 33(2)(b) of the Act had not been complied with and prior approval had not been taken. The same, as already held by this Court, could not have authorized the High Court to interfere with the punishment imposed without an adjudication on the validity of the dismissal. In the present case, such an adjudication had already been made and, therefore, the issue of the validity of the dismissal of the workman must be understood to have been gone into and decided. In such a situation, the High Court ought not to have interfered with the punishment imposed without considering the findings of the Labour Court on the correctness of the charges brought against the workman. The said aspect of the order of the High Court has, however, not been assailed by the workman. The aforesaid part of the order may, therefore, be understood to have been

[4] 2017 (16) SCC 540

accepted by the workman. In the above situation, the remaining part of the order i.e. the High Court interfering with the punishment imposed would clearly be contrary to the view expressed by this Court on the issue in Management of Karur Vysya Bank Ltd. (supra).

6. We, therefore, arrive at the conclusion that the High Court was not at all justified in passing the impugned order which is one of reinstatement with partial back-wages (25%). We accordingly interfere with the order of the High Court and restore the order of the Labour Court dated 25th May, 2011.

7. The appeal consequently is allowed in the above terms.

4.10. ***Management of KSRTC Central Division now Represented by its Chief Law Officer, K.H.Road, Bengaluru vs. Siddaraju R.V., since deceased by his Lrs. S.M. Hemalatha & others***[5]

7. *The Hon'ble Supreme Court in the case of SHIVASHARANAPPA (supra) at paragraph 4 of the judgment has observed thus:*

"Is the High Court correct in taking the view as noticed above? In Management of Karur Vysya Bank Ltd. V. S. Balakrishnan while dealing with a situation of absence of any approval under Section 33(2)(b) of the Act read with Section 33A thereof, this Court had taken the view that a finding on the question as to whether the employer has contravened the provisions of section 33(2)(b) would not be conclusive of the matter and the "the industrial adjudicator is required to answer the further question as to whether the dismissal or such other punishment as may have been imposed on the workman is justified in law."

8. *Further, in paragraph 5 of the said judgment it is observed thus:*

[5] MANU/KA/1160/2018

"...The same, as already held by this court, could not have authorized the High Court to interfere with the punishment imposed without an adjudication on the validity of the dismissal."

9. *In the light of the above, it is held* ***that*** *when an employee, in case if he is dismissed/discharged from service merely on the ground that he was a member of the Union who instituted the proceedings in respect of the award, or any charter of demand and on the other hand if the employee is punished on the proved misconduct may be by domestic enquiry, then it may not attract Section 33(2)(b) of the Act and in case if the employee challenges the dismissal order by taking the ground that it is in contravention of Section 33(2)(b) of the Act without seeking permission, then it is not automatic that the Labour Court to direct the management to reinstate the workman with full backwages. On the other hand, as it is held by this Court and also by the Hon'ble Supreme Court in the cases cited supra, the Labour Court has to go into the matter on merits and has to decide. For the above reasons, the petitioner has to succeed. Accordingly, the petition is allowed. Order dated 08th January 2014 passed in Ref No.24 of 2012 by the Labour Court, Bangalore is set aside and stands remanded to pass fresh orders in accordance with law and in the light of the observation made above. Since the employee is retired and has also died, the legal representatives are on record. In that view of the matter, the question of reinstatement does not arise. Hence, the Legal Representatives are entitled for back-wages in case if they succeed.*

4.11. ***Andhra Pradesh R.T.C. vs. B.S. David Paul***[6]

9. *The above position was re-iterated in A.P. State Road Transport Corporation and Ors. v. Abdul Kareem (2005 (6) SCC 36) and in Rajasthan State Road Transport Corporation and Ors. v. Shyam Bihari Lal Gupta (2005 (7) SCC 406).*

[6] (2006) 2 SCC 282

10. *In the case of State Bank of India vs. Ram Chandra Dubey & Ors., (2001) 1 SCC 73, this Court held as under:*

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to

the reinstatement without stating anything more as to the back wages.

Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages"

11. *The position was recently reiterated by three-judge Bench in State of U.P. and Another v. Brijpal Singh MANU/SC/2466/2005: AIR 2006 SC 3592.*

12. *The orders of the Labour Court as affirmed by the High Court are indefensible, deserve to be set aside, which we direct.*

13. *The appeals are allowed but without any order as to costs.*

4.12. ***Union of India vs. Kankuben***[7]

2. Background facts in a nutshell are as follows:

By a common judgment and order dated 4.5.2000 the Labour Court allowed the claims made by the respondents- workmen in the recovery applications filed under Section 33-C (2) of the Act in respect of certain claims of overtime

[7] (2006) 9 SCC 292

allowance which according to them was payable in view of what is called as 'on and off duty' for taking out and bringing in locomotives from the shed as was required to be done for the purpose of operating them at and from different stations. Apart from questioning the legality of the claims preliminary objection to the maintainability of the applications under Section 33-C (2) of the Act was raised. The Labour Court, however, did not accept the same and held that the applications were maintainable, relying on certain earlier adjudications by the Labour Court and the High Court. Writ petitions were filed under Articles 226 and 227 of the Constitution of India, 1950 (in short 'the Constitution') by the appellants questioning correctness of the Labour Court's award. Learned Single Judge held that on the basis of materials on record the entitlements were rightly worked out and, therefore, the recovery applications were maintainable. Letters Patent Appeals were filed before the High Court which by the impugned judgment dismissed them. It was held that instructions issued under Section 71-A to 71-H of the Indian Railways Act, 1890 (in short 'the Railways Act') and the Railway Servants (Hours of Employment) Rules, 1961 (in short 'the Employees Rules') did not in any way help the case of the appellants and in any event the applications under Section 33- C (2) of the Act were maintainable, as held by the High Court earlier.

4. *In State Bank of India v. Ram Chandra Dubey [(2001) 1 SCC 73 : 2001 SCC (L&S) 3] this Court held as under : (SCC pp. 77-78, paras 7-8)*

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions

can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to

have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

5. The position was recently reiterated by three-judge Bench of this Court in State of U.P. and Another v. Brijpal Singh (2005 (8) SCC 58). (Also see A.P. SRTC v. B.S. David Paul (2006 (2) SCC 282).

6. Director General (Works), C.P.W.D. (supra) is clearly distinguishable on facts, as in that case the employer had accepted its liability and that is why this Court did not interfere. The factual scenario is entirely different in the cases at hand. Right from the beginning the appellants have been questioning the maintainability of the petitions under Section 33-C (2) of the Act. In view of the settled position in law as delineated above, the appeals deserve to be allowed which we direct. In the peculiar circumstances of the case, if any amount has been paid to any of the respondents in compliance of the order of the Labour Court and/or the High Court the same shall not be recovered. Costs made easy.

4.13. ***Delhi Public Library vs. The Government of NCT of Delhi & Anr.***[8]

52. *Be that as it may, the view expressed in Karur Vysya Bank Ltd (supra) was reiterated by a 3-judge bench of the Supreme Court in Managing Director, North-East Karnataka Road Transport Corporation (supra). In that case, too, the respondent-workman Shivasharanappa was subjected to a domestic enquiry, on the charge of obtaining employment on the basis of fabricated qualification documents, resulting in a finding adverse to Shivasharanappa. Before the Labour Court, an issue was raised, regarding the validity of the proceedings in the domestic enquiry, in response to which the petitioner-Management requested for permission to lead evidence, which was allowed. The Labour Court held, vide its award dated 25th May, 2011, that the charge of obtaining employment by producing fabricated*

[8] 2019 SCC Online Del 9699

documents had convincingly been brought home to Shivasharanappa and that, as this act amounted to grave misconduct, no occasion for interference, with the order dismissing him from service, could be said to exist. Shivasharanappa petitioned the High Court. A learned Single Judge of the High Court took the view that, as, at the time of passing of the order dismissing Shivasharanappa from service, another proceeding, under the ID Act, involving him, was pending, prior approval, before dismissing him from service, was required to be taken by the Management, under Section 33(2)(b) of the ID Act and that, as no such prior approval had been taken, the dismissal of Shivasharanappa was void ab initio. The said decision of the learned Single Judge was upheld by the Division Bench of the High Court in appeal, resulting in the Management moving the Supreme Court, under Article 136 of the Constitution of India. The Supreme Court, relying on its earlier decision in Karur Vysya Bank Ltd (supra), held that the High Court was not justified in interfering with the punishment awarded to Shivasharanappa merely on the ground that prior approval, under Section 33(2)(b) of the ID Act, had not been taken, before dismissing Shivasharanappa from service. The High Court, it was held, had necessarily to adjudicate on the validity of the order dismissing Shivasharanappa from service. This aspect, of the award passed by the Labour Court, not having been made subject matter of challenge, by Shivasharanappa, before the High Court, the Supreme Court set aside the judgment of the High Court and restored the award, dated 25 May 2011 supra, of the Labour Court.

53. *The position that emerges from the above decisions, especially in view of the most recent expostulation of the law, by the Supreme Court in Karur Vysya Bank Ltd (supra) and Managing Director, North-East Karnataka Road Transport Corporation (supra), is that, while adjudicating on a complaint, under Section 33-A, filed by the workman, the Labour Court, or the Industrial Tribunal, has necessarily to follow a two-step process, firstly examining whether the Management had acted in compliance with Section 33 and, thereafter, in the event of the answer to the first issue being in the negative, whether the charges against the workman had*

illegally and validly been brought home to him, in the proceedings or enquiry, or otherwise. (It may be noted, here, that, though the recital of facts, in Managing Director, North-East Karnataka Road Transport Corporation (supra), does not disclose, clearly, whether the workman had moved the High Court under Section 10-A, or under Section 33- A, of the ID Act, Karur Vysya Bank Ltd (supra) was, clearly, a case arising from a complaint, by the workman, under the latter provision.)

54. *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd (supra), unquestionably, did cause a slight ripple in the stream; that ripple has, however, died down, and the waters are, at least for the nonce, still once again.*

55. *The reliance, of Mr. Yashpal Singh, on Rajasthan State Road Transport Corporation v. Satya Prakash (supra) is also, in the circumstances, unquestionably well taken; indeed, the said decision was also relied upon, by the Supreme Court, in Managing Director, North-East Karnataka Road Transport Corporation (supra), with the observation that it endorsed the same view as had been taken in Karur Vysya Bank Ltd (supra). Application of the above law to the facts of the present case*

56. *Applying the above law to the facts of the present case, it is clear that the award, dated 21st July, 2014 supra, passed by the learned Industrial Tribunal, on the complaint, of Respondent No. 2, under Section 33-A of the ID Act, cannot sustain, to the extent it directed reinstatement, of Respondent No. 2 on the sole ground that his termination was violative of Section 33(2)(b) of the ID Act.*

4.14. ***M/s Herbertsons Ltd vs. The Workmen of Herbertsons Ltd.***[9]

27. *It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other*

[9] (1976) 4 SCC 736

advantages gained the Court will be slow to hold a settle- ment as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the 3rd respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement.

28. *That being the position, we uphold the settlement as fair and just and order that the award of the Tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs.*

4.15. *M/s Tata Engineering & Locomotive Co. Ltd vs. Their Workmen*[10]

7. *There is no quarrel with the argument addressed to us on behalf of the workers that mere acquiescence in a settlement or its acceptance by a worker would not make him a party to the settlement for the purpose of section 18 of the Act (vide Jhagrakhan Collieries (P) Ltd. v. Shri G.o. Agarwal, Presiding officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur and others, (I) It is further unquestionable that a minority union of workers may raise an industrial dispute even if another union which consists of the majority of them enters into a settlement with the employer (vide Tata Chemicals Ltd. v. Its Workmen, MANU/SC/0276/198: (1978)IILLJ22SC. But then*

[10]AIR 1981 SC 2163

here the Company is not raising a plea that the 564 workers became parties to the settlement by reason of their acquiescence in or acceptance of a settlement already arrived at or a plea that the reference is not maintainable because the Telco Union represents only a minority of workers. On the other hand the only two contentions raised by the Company are:-

(i) that the settlement is binding on all members of the Sanghatana including the 564 mentioned above because the Sanghatana was a party to it, and

(ii) that the reference is liable to be answered in accordance with the settlement because the same is just and fair.

And both these are contentions which we find fully acceptable for reasons already stated.

***8**. In the result the appeal succeeds and is accepted. The impugned award is set aside and is substituted by one in conformity with the settlement. There will be no order as to costs.*

4.16. *M/s National Engineering Industries Ltd vs. State of Rajasthan & Ors.*[11]

***23.** To answer the question so raised, this Court had a look at the statutory scheme of the Act in depth and observed :*

"The aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen, Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an arbitration award. They all stand on a par."

[11] (2000) 1 SCC 371

It then held :

"On the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during conciliation proceedings on 5,5.1980 between respondent 1-management on the one hand and the four out of five unions of workmen on the other, had a binding, effect under Section 18(3) of the Act not only on the members of the signatory unions but also on die remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding on even future workmen as laid down by Section 18 (3Xd), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may hot be members of unions that are signatories to such settlement under section 12(3) of the Act." The court stressed the principle of collective bargaining in these words:

"It has to be kept in view that the Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. Thus principle of industrial democracy is the bedrock of the Act. The employer or a class of employers oh the one hand and the accredited representatives of the workmen on the other are expected to resolve the industrial dispute amicably as far as possible by entering into the settlement outside the conciliation proceedings, or if no settlement is reached and the dispute reaches the conciliator even during conciliation proceedings. In all those negotiations based on collective bargaining the individual workman necessarily recedes to the background. The reins of bargaining on his behalf are handed over to the union representing such workman. The union espouse the common cause on behalf of all their members Consequently, Settlement arrived at by them with management would bind at least their members and if such settlement is arrived at during conciliation proceedings, it would bind even non-members, Thus, settlements are the live wires under the Act for ensuring industrial peace and prosperity..."

29. *Industrial Tribunal is the creation statute and it gets jurisdiction on the basis of reference. It cannot go into tile question on validity of the reference. question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the management, labour Union and the Staff Union. When such a settlement is arrived at it 5 a package deal. In such -a deal some demands may be left out. It is not that demands which are left out, should be specifically mentioned in the settlement. It is not the contention of Workers' Union that tripartite settlement is in any by mala fide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings tinder Section 12 of the act and as such not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement [early show that the settlement was arrived at during the conciliation proceedings.*

32. *This appeal is accordingly allowed. Impugned judgment of the High Court is set aside and the Notification dated March 17, 1989 issued by the State Government under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, is quashed, in the circumstances there will be no order as to costs.*

4.17. ***Rajasthan State Road Transport Corporation vs. Satyaprakash[12]***

20. *The purpose behind enacting Section 33A and the scope thereof was succinctly explained by Gajendrakar J (as he then was), in a judgment by a bench of three judges in Punjab National Bank Ltd. vs. All India Punjab National Bank Employees Federation & Anr. reported in MANU/SC/0120/1959:AIR 1960 SC 160. In paragraph 31 thereof the Court noted that*

"31. the Trade Union movement in the country had complained that the remedy for asking for a reference under Section 10 involved delay, and left the redress of the grievance of the employees entirely in the discretion of the

[12] (2013) 9 SCC 232

appropriate Government; because even in cases of contravention of Section 33 the appropriate Government was not bound to refer the dispute under Section 10. That is why Section 33A was enacted to make a special provision for adjudication as to whether Section 33 has been contravened. This section enables an employee aggrieved by such contravention to make a complaint in writing in the prescribed manner to the tribunal and it adds that on receipt of such complaint the tribunal shall adjudicate upon it as if it is a dispute referred to it in accordance with the provisions of the Act.

Thus by this section the aggrieved employee is given a right to move the tribunal without having to take recourse to Section 10 of the Act.

21. *Thereafter while dealing with the scope of the Section 33A, the court surveyed the judgments then holding the field, and held at the end of paragraph 33 in the following words:-*

"33..... Thus there can be no doubt that in an enquiry under S. 33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of S. 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered under S.33A. Therefore, we cannot accede to the argument that the enquiry under S. 33A is confined only to the determination of the question as to whether the alleged contravention by the employer of the provisions of S. 33 has been proved or not."

(emphasis supplied)

This judgment has been referred to, and the proposition has been once again reiterated by a bench of three Judges in para 7 of Delhi Cloth and General Mills Co. Ltd. vs. Rameshwar Dayal reported in AIR 1961 SC 689.

22. *This legal position has been reiterated in the judgment of the Constitution Bench in P.H. Kalyani vs. M/s Air France Calcutta reported in*

AIR 1963 SC 1756 which has been quoted with approval in paragraph 17 of Jaipur Zi'la Sahkari Bhoomi Vikas Bank Ltd. (supra). In that matter, the respondent employer had applied under Section 33 (2) (b), but the workman had also filed a Compliant under Section 33A which was heard like a Reference. Evidence was led therein by the parties, and on its own appraisal of the evidence the Labour Court had held that the dismissal was justified. This Court accepted that finding, and it was held that the approval when granted will relate back to the date when the order of dismissal was passed. On the other hand, if the employer fails to prove the misconduct, the order of dismissal will become ineffective from the date when the dismissal order was passed by the employee. This legal position has been reiterated from time to time [see for instance Lalla Ram vs. D.C.M. Chemicals Works Ltd. reported in 1978 (3) SCC 1]. In Jaipur Zila Sahakari Bhoomi Vikas Bank (supra) the Constitution Bench endorsed the view taken in Strawboard (supra) and Tata Iron & Steel Co. (supra) and held that the view expressed in Punjab Beverages (supra) was not correct.

26. For the reasons stated above, this Civil Appeal is allowed. We hereby set-aside the judgment and order rendered by the Division Bench of the Rajasthan High Court in D.B. Special Appeal (Writ) No.1093 of 2005, dismissing the appeal filed by the appellants against the judgment and order dated 19th July, 2005, rendered by a learned Single Judge of that High Court in Civil Writ Petition No. 3933 of 2009, confirming the award dated 3.12.2002 rendered by the Industrial Tribunal, Jaipur in Case No. I.T. No.41 of 1994. All the three judgments, except the finding in paragraph 8 and 9 of the Industrial Tribunal, Jaipur in Case No. I.T. No.41 of 1994 are hereby set-aside. Consequently, the said Complaint being case No. I.T. No.41 of 1994 shall stand dismissed requiring no order on the Civil Writ Petition No.3933 of 2009 and D.B. Special Appeal (Writ) No.1093 of 2005. Both of them will stand disposed of. In the facts of the present case however, we do not make any order as to costs.

4.18. *Management of Karur Vysya Bank Ltd vs. S. Balakrishnan*[13]

> ***10.*** *Section 33A of the Act enjoins upon the Industrial Adjudicator a twin duty. The first is to find out as to whether the employer has contravened the provisions of the Section 33 [in the present case by not filing an application seeking approval under Section 33(2)(b) of the Act]. However, a finding on the above question would not be conclusive of the matter and the Industrial Adjudicator is required to answer the further question as to whether the dismissal or such other punishment as may have been imposed on the workman is justified in law. The issue of sustainability of the punishment imposed naturally has to be decided within the contours of the reference jurisdiction as indicated above. That Section 33A of the Act enjoins upon the Industrial Adjudicator the aforesaid twin duties is once again clear from a recent pronouncement of this Court in Rajasthan State Road Transport Corporation and another versus Satya Prakash [(2013) 9 SCC 232 (PARA 23)] wherein this Court had the occasion to consider the long line of decisions taking the said view eventually culminating in what had been recorded in the paragraph 23 of the decision in Rajasthan State Road Transport Corporation and another (supra) which is to the following effect:*
>
> *"23. In the present case, the Tribunal accepted that during this very short span of service as a daily wager the respondent had committed the misconduct which had been duly proved. Having held so, the Tribunal was expected to dismiss the Complaint filed by the respondent. It could not have passed the order of reinstatement with continuity in service in favour of the respondent on the basis that initially the appellant had committed a breach of Section 33 (2) (b) of the Act. It is true that the appellant had not applied for the necessary approval as required under that section. That is why the Complaint was filed by the respondent under Section 33A of the Act. That Complaint having been filed, it was adjudicated like a reference as required by the*

[13] (2016) 12 SCC 221

> *statute. The same having been done, and the misconduct having been held to have been proved, now there is no question to hold that the termination shall still continue to be void and inoperative. The de jure relationship of employer and employee would come to an end with effect from the date of the order of dismissal passed by the appellant. In the facts of the present case, when the respondent had indulged in a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service. The learned Single Judge of the High Court as well as the Division Bench have fallen in the same error in upholding the order of the Tribunal."*
>
> ***14.*** *Consequently and in the light of the foregoing discussions, we allow this appeal and set aside the order of the Madras High Court with the observations as indicated above.*

5. Per contra, Sri.K.S.Subramanya, learned counsel for the respondent-workman would submit that the order passed by the Labour Court is proper and is based on the decision of the Hon'ble Apex Court in ***Jaipur Zilla Sahakari Bhoomi Vikas vs. Ram Gopal Sharma[14].*** He submits that the dismissal of the respondent-workman was void for not having filed an application before the Industrial Tribunal for approval of its action simultaneously passing of the dismissal order as required under Section 33(2)(b) of

[14] 2002 I LLJ 834 SC

the Act. Without such approval of the Industrial Tribunal, the order of dismissal cannot come into existence and is non-est and is deemed never to have been passed and as a necessary consequence thereof, it is deemed that the respondent is continued in the service of the petitioner and as such, entitled to all benefits of such employment.

6. The Labour Court has correctly held that the application filed by the respondent under section 33(C)(2) of the Act towards due wages is maintainable and as such has directed the petitioner to make payment of such wages from the date of dismissal i.e., 6.8.2002 upto November 2003.

7. The petitioner had never called upon the respondent for work after having dismissed the respondent. It was therefore required of the employer to have called upon the worker to report to work by fixing a date, time and place. The employer not having done so, cannot contend that it was the responsibility of

the workman to approach the employer seeking for employment more so when the employer has approached this Court by filing a Writ Petition challenging the order of reinstatement and had sought for stay of the order. The Labour Court has exercised powers vested in it in a proper and required manner in terms of Section 33(C)(2) of the Act.

8. He relies upon the following decisions:

8.1. ***Hon'ble*** Apex Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd***, more particularly Paras 1, 3 and 15 thereof, which are reproduced hereunder for easy reference:

> ***1.*** *From the Order of Reference made in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and another [(1994) 6 SCC 522], the question that arises for consideration is:*
>
> > *"If the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947, whether the order of dismissal becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative?"*
>
> ***3.*** *The two Benches consisting of three learned Judges in (1) Strawboard Manufacturing Co. vs. Gobind [1962 Supp. (3) SCR 618] and (2) Tata Iron & Steel Co. Ltd. vs. S.N. Modak [1965 (3) SCR 411] have taken the view that if the approval is not granted under Section 33(2)(b) of the*

Industrial Disputes Act, 1947 (for short 'the Act'), the order of dismissal becomes ineffective from the date it was passed and, therefore, the employee becomes entitled to wages from the date of dismissal to the date of disapproval of the application. Another Bench of three learned Judges in Punjab Beverages Pvt. Ltd., Chandirarh vs. Suresh Chand & Anr. [1978 (3) SCR 370] has expressed the contrary view that non-approval of the order of dismissal or failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative; failure to apply for approval under Section 33(2)(b) would only render the employer liable to punishment under Section 31 of the Act and the remedy of the employee is either by way of a complaint under Section 33A or by way of a reference under Section 10(1)(d) of the Act. It may be stated here itself that there was no reference in this decision to the two earlier decisions aforementioned.

15. *The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because*

of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.

9. The decision of the Hon'ble Apex Court in the case of ***Engineering Laghu Udyog Employees' Union Vs. Judge, Labour Court and Industrial Tribunal***[15] more particularly Para 12 thereof, which is reproduced hereunder for easy reference:

> ***12.*** *In Gujarat Steel Tubes Ltd. Case (supra), [1980] 2 SCR 146, Krishna Iyer, J. sought to make a distinction between an approval which is required to be made under Section 33 of the Act and a reference under Section 10 thereof stating:*
>
> > *"150. Kalyani was cited to support the view of relation back of the Award to the date of the employer's termination orders. We do no agree that the ratio of Kalyani corroborates the proposition propounded. Jurisprudentially, approval is not creative but confirmatory and therefore relates back. A void dismissal is just void and does not exist. If the Tribunal, for the first time, passes an order recording a finding of misconduct and thus breathes life into the dead shall of the Management's order, predating of the nativity does not arise. The reference to Sasa Musa Kalyani enlightens this position. The latter case of D.C. Roy v. The Presiding Officer, Madhya Pradesh Industrial Court, Indore & Ors. (supra) specifically refers to Kalyani 's case and Sasu Musa's case and holds that where the Management discharges a workmen by an order which is void for want of an enquiry or for blatant violation of rules of natural justice, the relation-back doctrine cannot be invoked. The jurisprudential difference between a void order, which by a subsequent judicial resuscitation comes into being de novo, and an order, which*

[15] 2004 1 LLJ 1105

> *may suffer from some defects but is not still born or void and all that is needed in the law to make it good is a subsequent approval by a tribunal which if granted, cannot be obfuscated."*
>
> *(emphasis supplied)*

> ***13.*** *When in terms of the proviso appended to clauses (b) of Section 33 of the Act, an approval is sought for and is refused, the order of dismissal becomes void. If an approval is not obtained still, the order of punishment cannot be given effect to. It is, therefore, not correct to contend that the Tribunal in a reference under Section 10 of the Act, when passes an order recording a finding of misconduct, brings life into the dead. Unfortunately, the Court did not take notice of the binding decisions in Motipur Sugar Factory's case (supra) and Firestone's case (supra).*

10. As regards the settlement with other workmen, he submits that the fact remains that the dispute between the employer and the workman insofar as respondent is concerned has not been settled. Therefore, the settlement which has occurred in respect of other workmen is not binding on the respondent and the same has no bearing on the present matter and therefore, seeks for dismissal of the petition. By relying on the same, he submits that the order passed by the Labour Court is proper and correct and hence it is not required to be interfered with.

11. Heard Sri.K.R.Anand, learned counsel for the petitioner and Sri.K.S.Subramanya, learned counsel for the respondent and perused papers.

12. The points that would arise for consideration for this Court are that:

1) Whether a workman could be dismissed without taking the approval of the Industrial Tribunal in terms of Section 33(2)(b) of the Industrial Disputes Act?

2) Whether a reference made under Section 33(C)(2) of the Industrial Disputes Act if the other workmen were to settle their disputes would it be required of the remaining workmen to also settle their dispute?

3) Whether the Labour Court had the power in an application filed under Section 33(C)(2) of the Industrial Disputes Act to direct reinstatement of the workman?

4) Whether the order passed by the Labour Court suffers from any legal infirmity requiring interference at the hands of this Court?

5) What Order?

13. I answer the above points as under:

14. **Answer to Point No.1: Whether a workman could be dismissed without taking the approval of the Industrial Tribunal in terms of Section 33(2)(b) of the Industrial Disputes Act?**

14.1. Section 33 of I.D.Act is reproduced hereunder for easy reference:

> ***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 [1] a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub- section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment

and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit:

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub- section had expired without such proceedings being completed.

14.2. Though it is contended by Sri.K.R.Anand, learned counsel for the petitioner that the requirement under Section 33(2)(b) of the Act is formal in nature, in terms of Section 33 of I.D.Act condition of service etc are to remain unchanged during the pendency of the proceedings. One such circumstances is under Sub-Section (1) of Section 33 of the Act. During the pendency of any conciliation

proceedings before a Conciliation Officer or a Board or any proceedings before the Arbitrator, Labour Court or Tribunal in an industrial dispute.

14.3. In terms of Sub-Section (2) of section 33 of the Act where any proceedings in respect of industrial disputes, variation could be made only upon payment of wages of one month and on an application being made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. This aspect has been considered extensively by the Hoh'ble Bombay High Court in ***DUNCAN ENGINEERING LTD. VS. AJAY C.SHELKE***[16], more particularly, Paras 52, 53 and 54 which are reproduced hereunder for easy reference:

> ***52.*** *The clear and categorical pronouncement of the Constitution Bench would indicate that an*

[16] (2021) 3 LLJ 295

order of dismissal or discharge remains incomplete and inchoate till the grant of approval under the mandatory provision of Section 33(2)(b). The decision of the Constitution Bench does not indicate that an order in breach of 33(2)(b) can be subsequently validated in a reference or in a complaint under section 33A. On the contrary, the dictum is that an order of dismissal, in breach of this mandatory provision is ab initio void and does not severe the employer-employee relationship, consequently, the employee is deemed to continue in service. Hence, contravention of the mandatory provision, either due to non- payment of one-month wages or non-fling of approval application or withdrawal or rejection of approval application, would entitle the employee for reinstatement with all consequential benefits. This is the principle in Jaipur Zila which has been followed and relied upon in United Bank of India (supra), wherein in a Reference under Section 10, the dismissal order was held to be void for non-compliance of proviso to Section 33(2)(b) of the ID Act and the workman was ordered to be reinstated with full back wages even though the inquiry was held to be fair and proper, and order of dismissal was justified. It will therefore be wrong to distinguish the judgment as confined to the interpretation of Section 33(2)(b) and or to uphold the contention of learned counsel for the Petitioner that the judgment did not consider the scope of inquiry in a compliant under Section 33A or in a Reference under Section 10 of the ID Act.

53. *The decision of the Apex Court in Indian Telephone Industries (supra) and the decision of this Court in Air India (supra) further emphasizes that withdrawal of the approval application invalidates the order of dismissal, and the workman would be entitled to full back wages as if his services were never terminated. Such an employee cannot be dismissed by issuing a fresh dismissal order without paying the full back*

wages from the date of the first order of dismissal till the second order of dismissal. It is thus crystal clear that contravention of Section 33(2)(b), which renders the dismissal order void ab initio and entitles the workman to reinstatement with all consequential benefits cannot be treated as a technical breach. Treating the contravention as a mere technical breach and validating a void order subsequently in a Reference under Section 10 or Complaint under Sec. 33A of the ID Act by giving an opportunity to the employer to justify the action of dismissal on merits would be contrary to the dictum of the Constitution Bench in Jaipur Zila (supra). Moreover, such interpretation as sought to be expounded by the counsel for the Petitioner is not in harmony with the object of the provision and does no effectuate the object of legislature.

***54**. An employee, who is dismissed in breach of Section 33(2)(b) can legitimately claim to continue to be in the employment, notwithstanding the order of dismissal or discharge. What are the rights available and what is the remedy open to such employee, when the employer refuses to reinstate and /or to pay wages, has been considered by the Apex Court in T.N. State Transport Corporation v/s. Neethivilangan, Kumbakonam (2001) 9 SCC 99. The Apex Court has held thus :-*

> *"16. From the conspectus of the views taken in the decisions referred to above the position is manifest that while the employer has the discretion to initiate a departmental inquiry and pass an order of dismissal or discharge against the workman the order remains in an inchoate state till the employer obtains order of approval from the Tribunal. By passing the order of discharge or dismissal de facto relationship of employer and employee may be ended but not the de jure relationship for that*

could happen only when the Tribunal accords its approval. The relationship of employer and employee is not legally terminated till approval of discharge or dismissal is given by the Tribunal. In a case where the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition fled under Section 33 (2)(b) of the Act on merit the employer is bound to treat the employee as continuing in service and give him all the consequential benefits. If the employer refuses to grant the benefits to the employer the latter is entitled to have his right enforced by fling a petition under Article 226 of the Constitution. There is no rational basis for holding that even after the order of dismissal or discharge has been rendered invalid on the Tribunals rejection of the prayer for approval the workman should suffer the consequences of such invalid order of dismissal or discharge till the matter is decided by the Tribunal again in an industrial dispute. Accepting this contention would render the bar contained in Section 33(1) irrelevant. In the present case as noted earlier the Tribunal on consideration of the matter held that the employer had failed to establish a prima facie case for dismissal/discharge of the workman, and therefore, dismissed the application fled by the employer on merit. The inevitable consequence of this would be that the employer was duty bound to treat the employee as continuing in service and pay him his wages for the period, even though he may be subsequently placed under suspension and an enquiry initiated against him."

14.4. It is therefore clear that whenever there is an industrial dispute which is pending either between the employer and the workman or between the employer and the union, necessary permission under Section 33 (2)(b) of I.D.Act would be required to be obtained by the employer in the event of the employer wanting to vary the terms or service. Dismissal would definitely be covered under the scope and ambit of *"varying the terms of service"*. Thus, without obtaining permission of the Court seized of the industrial dispute by filing necessary application under Section 33 (2)(b) employer cannot dismiss the workman from service.

14.5. Thus, I am of the considered opinion that the embargo imposed in terms of Section 33(2) would be applicable to the present case. The dismissal of the respondent when the dispute

was pending is a clear violation of Sub-Section (2) of Section 33 of the Act entitling such workmen to continue to be in employment notwithstanding the order of dismissal or discharge which is submission of Sri.Subramanya in that without such permission having been sought for and obtained, the order of dismissal is to be treated non-est and never to have been passed.

14.6. Hence, I answer Point No.1 by holding that a workman could not be dismissed without taking the approval of the Industrial Tribunal in terms of Section 33(2)(b) of the Industrial Disputes Act, when proceedings are pending.

15. **Answer to Point No.2: Whether any reference made under Section 33(C)(2) of the Industrial Disputes Act if the other workmen were to settle their disputes would it be required of the remaining workman to also settle his dispute?**

15.1. Section 33(C) of I.D.Act is reproduced hereunder for easy reference:

33C. Recovery of money due from an employer.- *(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:*

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; [within a period not exceeding three months:]

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking

> *such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.*
>
> *(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section (1).*
>
> *(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.*

15.2. A perusal of the above provision would indicate that in terms of Section 33(C)(1) of I.D.Act where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman by himself or any other person authorized by him in writing can make an application to the appropriate Government for the recovery of the money due to him and if the appropriate Government were of the

opinion that the amounts were due, a certificate to that effect shall be issued to the Collector who shall proceed to recover the same as arrears of land revenue.

15.3. Thus, a claim to be made under Section 33(C)(1) of I.D.Act where the amounts are crystalised and/or due under a settlement or an award or the amounts are due on account of layoff or retrenchment or closure of establishments in terms of Chapter VA and VB of the I.D.Act. In all the above cases, there is a crystalisation of the amount or methodology of crystalising the amounts and as such, that procedure is prescribed.

15.4. In terms of Section 33(C)(2) of I.D.Act , if a workman were entitled to receive any money from the employer and if a question arises as to the amount of money due or a computation of the amount, then the same would have to be

decided by the Labour Court. Thus, Section 33(C)(2) of I.D.Act would come into operation only when there is a dispute *per se* as regards the amounts due and/or the methodology of calculating it. This in my considered opinion is one which is peculiar to a particular workman and would have to be determined for the workman and general settlement with other workers or union, employer agreeing to make payment of monies to them would not *ipso facto* apply to every workman. It is therefore the choice of the workman to either accept the offer made by the employer, negotiate with the employer or reject the same. In the event of acceptance, the proceedings under Section 33(C)(2) of I.D.Act would get closed. In the event, negotiation being successful, the proceedings under Section 33(C)(2) of I.D.Act would get closed. In the event of negotiation failing and/or the workman refusing the offer

made by the employer, the proceedings under Section 33(C)(2) of I.D.Act would continue. In the present case, merely because the offer made by the employer was accepted by 4 other workmen, the same cannot constrain another workman to accept the offer made by the employer.

15.5. The decision in ***KCP Limited*** case which has been referred to by Sri.K.R.Anand, learned counsel for the petitioner would not be applicable to the present case since in that case the settlement was on behalf of the entire work force entered into by the Union and was as regards common dues which are liable to be paid to all the workmen wherein in the present case it is the amounts due to the particular workman.

15.6. Similar is the situation in ***Kankuben*** case where the dispute was as regards common

amounts due on overtime work to all workmen. In ***M/s.National Engineering Industries Limited case***, the settlement which was arrived at was under Section 12(3) of I.D.Act between the employer and five unions of workmen. Thus, the said decision would also not be applicable to the present case. In ***M/s.Herbertsons Limited*** case, the settlement was again between the employer and the union and not between the employer and few of the workmen. Hence, the said decision is also not applicable to the present case.

15.7. Thus, I answer Point No.2 by holding that whenever a reference is made under Section 33(C)(2) of I.D.Act to the Tribunal, if a few of the workmen settle the dispute with the employer, the remaining workmen are not required to settle the same as per the

settlement agreed between the employer and some workmen. The workmen's individual claims/dues subject matter of Section 33(C)(2) of I.D.Act, proceedings can continue to be agitated irrespective of the settlement.

16. **Answer to Point No.3: Whether the Labour Court had the power in an application filed under Section 33(C)(2) of the Industrial Disputes Act to direct reinstatement of the workman?**

16.1. The contention of Sri.K.R.Anand, learned counsel for the petitioner is that merely because certain amounts have not been paid and there is proceedings initiated under Section 33(C)(2) of I.D.Act and there is a violation of Section 33(2)(b) of I.D.Act and the workman has been dismissed during the pendency of the said proceedings, the Tribunal could not have directed for reinstatement of the workmen.

16.2. **Sri.C.V.Venkataravan's** case has been relied upon to contend that it is only the benefit and entitlement that can be computed in a proceeding under Section 33(C)(2) and neither could the Labour Court reinstate the workman nor direct payment of full backwages. A perusal of the decision in ***Venkataravan's*** case indicates that in that case what was sought for by the workman under Section 33(C)(2) of I.D.Act was certain amounts which the workman claim which had not earlier been recognized by the employer. It is in that background that the Co-ordinate Bench of this Court held that there could be no adjudication of the amounts due, it can only be a calculation of the amounts due. The said decision would not be applicable to the present facts since that is not the question involved in the present matter.

16.3. The decision of the Hon'ble Apex Court in ***Brijpal Singh's*** case is brought into service by Sri.K.R.Anand, learned counsel for the petitioner to contend that the question of backwages can only be decided in a proceeding under Section 10 of I.D.Act and the Labour Court would have no jurisdiction to adjudicate the claim made by the workman under Section 33(C)(2) of I.D.Act as regards an undetermined claim.

16.4. By relying on ***Shivasharanappa's*** case, it is submitted that even if permission was not obtained under Section 33(2)(b) of I.D.Act and the dismissal was bad for the reason that there would need to be adjudication made as regards the cause of dismissal by the Labour Court to ascertain if the cause shown requires dismissal of the workman or not, in the event of dismissal being justified, then, the question of

reinstatement and payment of backwages would not arise. For similar purpose, the decision in ***Siddaraju's*** case has been relied upon.

16.5. Sri.K.S.Subramanya, learned counsel for respondent on the other hand has relied upon ***Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd's*** case to contend that if the permission under Section 33(2)(b) of I.D.Act had not been taken, the dismissal becomes ineffective and non-est and the proceedings which had been filed by the workman under Section 33(C)(2) of I.D.Act would have to continue as if there is no dismissal and this aspect having arisen out of the illegal act of the employer while the proceedings under Section 33(C)(2) of I.D.Act were pending, the Court ceased of Section 33(C)(2) of I.D.Act can decide on the validity or otherwise, the dismissal of the workman

without obtaining permission under Section 33(2)(b) of I.D.Act which is what has happened in the present case and therefore, there cannot be any fault found in the same. He submits that even if a dismissal order has been passed, unless permission under Section 33(2)(b) of I.D.Act was obtained, the order of dismissal could not have been given effect to.

16.6. From perusal of the above proposition, it is clear that permission under Section 33(2)(b) of I.D.Act is required before the dismissal of the workman when a dispute is pending between the employer and the union or the employer and the workman. In such case, permission under Section 33(2)(b) of I.D.Act is required to be obtained before dismissal of the workman. However, as detailed hereinabove, in the event of permission under Section 33(2)(b) of I.D.Act not being obtained and the dismissal order

being challenged by the workman, in such a situation, the employer would have to justify the order of dismissal. In the proceedings where the dismissal is challenged, while enquiring into the order relating to dismissal, the Court could enquire into and give a finding as regards the validity or otherwise of the dismissal order.

16.7. In the present case, it is clear that there was a proceeding under Section 33(C)(2) of I.D.Act which was pending where the workman had lodged certain claims for monies due and payable by the employer. Thus, there was a dispute which was pending. It is during the pendency of the said dispute that the employer dismissed the workman from service without obtaining permission under Section 33(2)(b) of the I.D.Act.

16.8. There is no particular evidence which has been brought on record to support the order of dismissal except to allege that there is a misconduct on part of the workman and as such, the employer was entitled to dismiss the workman from service. A reading of the entire petition does not indicate any attempt made by the employer to support the order of dismissal.

16.9. A reading of the order passed by the Labour Court in the proceedings under Section 33(C)(2) of I.D.Act in Application No.1/2004 also does not indicate that the employer having made any attempts to establish any delinquency on part of the workman. Infact no evidence was led by the employer though the case was posted on 17.06.2008, 14.07.2008, 29.7.2008, 21.08.2008, 04.09.2009 and 17.09.2008. It is thereafter that arguments were heard.

16.10. The employer addressed his arguments on which basis the order came to be passed. Thus even though there was a claim made by the workman for his reinstatement and arguments are advanced on that aspect by contending that the Labour Court did not have the power under Section 33(C)(2) of I.D.Act to determine whether the dismissal was made, the employer knowing fully well that the same was in question did not lead evidence to prove the validity of the dismissal, such an employer cannot now be heard to contend that even if the requirement under Section 33(2)(b) of I.D.Act were not followed, the employer could justify the order of dismissal. Though the same is the correct position of law, the employer has not availed this opportunity.

16.11. The decisions in ***Satyaprakash's*** case and ***BalaKrishnan's*** case relied upon by

Sri.K.R.Anand, learned counsel for the petitioner to contend that the Court ought to decide the validity or otherwise of the dismissal. Therefore, the said cases would also not apply to the present case.

16.12. I answer Point No.3 by holding that when disputes are pending before the Labour Court, the Labour Court could adjudicate all incidental matters relating thereto and relating to the industrial dispute which could include the setting aside the order of dismissal directing the reinstatement and ordering the backwages.

17. **Answer to Point No.4: Whether the order passed by the Labour Court suffers from any legal infirmity requiring interference at the hands of this Court?**

17.1. In view of the discussion held as regards the aforesaid points, the Labour Court having decided the issue by taking note the fact of the workman having been dismissed from service

during the pendency of the proceedings before it, there being no permission under 33(2)(b) of I.D.Act which had obtained, no justification having been made as regards the order of dismissal, the Labour Court has rightly come to a conclusion that the dismissal was improper and directed the reinstatement of the workman with backwages. In view of the above discussion, I do not find any infirmity in the order passed by the Labour Court requiring interference by this Court.

18. **Answer to Point No.5: What Order?**

18.1. Since no grounds are made out, the Writ Petition stands dismissed.

Sd/-
JUDGE

PRS