
(2005) 02 DEL CK 0189

In the Delhi High Court

Case No : Writ Petition (C) No. 3871 of 2000

Delhi Transport Corporation

APPELLANT

Vs

Jagdish Chander

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109
Constitution of India, 1950 — Article 141, 142, 226
Industrial Disputes Act, 1947 — Section 1, 10, 10(1), 10A, 11

Citation : (2005) 120 DLT 664 : (2005) 3 LLJ 390

Hon'ble Judges : Swatanter Kumar, J;S. Ravindra Bhat, J;D.K. Jain, J

Bench : Full Bench

Advocate : Raj Birbal, M. Taiyab Khan, Vinay Sabharwal, Vibhu Shanker and Ataul Haque, for the Appellant; Jyoti Singh and Rasmeet K. Charya, for the Respondent

Judgement

Swatanter Kumar, J.—The law whether legislatively enacted or which finds its origin from the predicated judicial pronouncements, commonly known as Judge made law, is essentially mutable and progressive. It normally tilts in favor of the need of the developing society while keeping in view the object sought to be achieved by the provisions of a given statute. Absolute, strict or rigid interpretation of law can some time cause results which may not be conducive for the attainment of social goal by enforcement of the provisions of the Act. This concept is applicable with greater emphasis to social welfare legislations. Peter Muller said what is lasting is not what resists time but wisely changes with it. Often it is said that law must be understood and implemented in its correct perspective keeping in mind the constitutional mandate, attainment of ultimate legislative object and ends of justice. A legislation with its limitations reflects the vision of the society, the law makers and its enforceability is the foundation of its acceptance. Provisions of any Act, is a vision, without the ability to execute for the benefit of the section of the society for which it is enacted, is probably a hallucination. Sometimes the Courts in order to meet the need of public policy

and welfare, materially take into consideration and rest their judgment on de facto doctrine. Diversified approach to a social problem within the limitation of the statutory provisions on rare occasion leads to divergent views being expressed by the Courts causing statement in effective and proper application of law by different quarters of the State Administration as well as judicial hierarchy. Divergent opinions per se are not adverse to the administration of justice. Divergent opinions in fact provide the foundation for development of law by reference to a Larger Bench. Exercise of such jurisdiction is an accepted norm in order to maintain consistency in law and judicial discipline.

2. A Division Bench of this Court in LPA No. 361/2002 took the view that the provision of Section 17(b) of the Industrial Disputes Act (hereinafter referred to as the Act) has no application in the proceedings of a pending writ petition arising from an order of the Industrial Tribunal rejecting the application of the employer u/s 33(2) of the Act. This view was divergent to the view taken by another Division Bench of the Court in an earlier LPA No. 426/ 2001 holding that an application u/s 17(b) of the Act would be maintainable in the cases of the present kind. Placed in this situation S.K. Mahajan, J. (as His Lordship then was) vide his order dated 9th April, 2003 in WP(C) No. 3871/2000 referred the question in the present writ petition to a Larger Bench. The order of reference reads as under:

"Along with the counter-affidavit the respondent workman had filed an affidavit u/s 17-B of the Industrial Disputes Act for payment of full salary to the workman till such time the writ petition was pending in this Court. In reply to the affidavit of the respondent u/s 17-B of the Act, it is submitted by learned Counsel for the petitioner that the application u/s 17-B was not maintainable inasmuch as no award directing reinstatement of the workman was challenged by the management. It is submitted that it is only in case an award directing reinstatement of the workman is challenged by the management that the Court has the power to direct payment of last drawn wages to the workman during the pendency of the proceedings before the High Court. While learned Counsel for the respondent has placed reliance upon the judgment of this Court in LPA No. 361/2002 decided on 25th September, 2002 to contend that in a case of this nature provisions of Section 17-B have no application, learned Counsel for the respondent workman has relied upon the judgment of this Court in LPA No. 426/2001 decided on December 6, 2001 to contend that the application u/s 17-B would be maintainable in the case of the present nature. The judgment of Division Bench in LPA No. 426/2001 has not been referred to in the judgment in LPA 361/2002. Since there is a conflict of opinions of the two Division Benches of this Court, it would be appropriate that the matter is authoritatively decided by a Larger Bench of the Court. This petition be, accordingly, placed before Hon'ble the Chief Justice for Constituting a Larger Bench to decide a question as to whether the provisions of Section 17-B of the Industrial Disputes Act will be applicable in a case where the management in the writ petition has challenged the order of the Labour Court/Industrial Tribunal whereby its application u/s 33(2)

(b) of the Act seeking approval of the order of dismissal was dismissed by such Court or Tribunal.

3. Before we embark upon the discussion on various facets of the case, reference to basic facts would be necessary. Jagdish Chander, workman was appointed as a conductor with the Delhi Transport Corporation on 20.5.88. According to the management, the workman was irregular and irresponsible towards his duties. The workman misbehaved with the passengers in the bus on 28.10.83 and a complaint was received against him upon which a warning was issued to the workman not to misbehave in future with any commuter. The workman remained absent unauthorisedly for 59 days for the period starting from January, 1987 to August, 1987. Vide order dated 17.5.88 the workman was censured. The respondent workman again absented himself unauthorisedly for 177 days during the period 1.1.88 to 31.12.88 for which punishment of three stages lower in the time scale of Conductor as on 22.7.89 was imposed upon him. Still again he was unauthorisedly absent during the period January, 1992 to October, 1992. Keeping in view his past service record, the Administration served a charge-sheet upon him on 19.1.1993. In the charge-sheet it was stated that he was absent during that period for 52 days and was not interested in performing his duties. This was treated to be a misconduct on the part of the employee in terms of para 4 and paras 19(f)(h) and (m) of the standing orders governing the conduct of Delhi Transport Corporation employees. An oral inquiry was conducted after affording full opportunity to the workman. The inquiry officer gave his report finding him guilty under the article of charges. The disciplinary authority while accepting the report of the inquiry officer issued show-cause notice to the workman while he was not removed from service. The workman submitted a reply which was considered by the disciplinary authority who by its order dated 19.5.93 removed the workman from service on the same day. One month's wages as contemplated u/s 33(2)(b) of the Act was sent to the respondent by money order. The corporation also filed an application for approval u/s 33(2)(b) of the Industrial Disputes Act before the Industrial, Delhi. This application was contested by the workman, after affording the parties opportunity to complete their pleadings and lead evidence in support thereof, vide its order dated 19.8.99, the application of the corporation was rejected by the Tribunal as it declined to grant the approval prayers for. This order of the Tribunal dated 19.8.99 has been impugned and its legality and validity is questioned by the petitioners in the present writ petition.

4. Notice to show cause why petition be not admitted was issued by the Court vide its order dated 27.11.2002. After service, the respondent workman filed an application u/s 17-B of the Industrial Disputes Act which was listed before the Court the Corporation contested the said application on merits and even its very maintainability in the present proceedings. These arguments and the judgment relied upon by the Counsel for the respective parties, resulted in the passing of the order dated 9.4.2003 referred above.

5. The above order of reference raises a simple but question of far-reaching repercussions on Industrial Law. In order to discernibly answer the question posed before the Larger Bench, it is necessary for us to examine and interpret the relevant provisions of the Industrial Disputes Act with reference to the various accepted tenets of statutory interpretation. The Legislature in its wisdom had amended the provisions of Section 17(b) of the Act by amending Act 46 of 1982 with effect from 21st August, 1984 which reads as under:

"17B. Payment of full wages to workman pending proceedings in higher Courts.-- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.

Legislative intent

6. Supreme Court in the case of R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), said a Statute is to be construed to the intent of them that make it. This principle has been with approval and, consistently, reiterated by the Supreme Court even in recent times. Thus, it is a settled cannon and as well a conventional way of interpreting or construing a statute to seek the intention of the makers of law. The Courts translate or interpret the law while keeping in mind the object of the statute and intent of the Legislature. They have Therefore to look essentially to the words of the statute to discern the reference aiding their effort as much as possible by the context. The Legislature amends or substitutes the law as the legislation is primarily directed to problems before the Legislature based on information derived from the past and present experience with the intent to cover similar problems arising in future and to effectuate some public benefit. In order to appropriately discover the legislative intent reference to its objects and reasons though for a very limited purpose can be useful. Lord Cairns said, "I say that we must look to what the purpose is if while Sir John Nichol said the key to the opening of every law is the reason and spirit of the law." Welfare legislations are normally enacted for the betterment of a section of the society. The provisions of such a statute would normally be construed liberally so as to ensure that the very purpose of enacting that law is not frustrated or undermined to an extent that, that very section is not able to receive the benefit of legislation. Emphasizing the need of interpreting the words

of a statute with legislative purpose and object in mind, the Supreme Court in the case of *Workman of Dhima Kuchhi Tea Estate v. Management of Dhima Kuchhi Tea Estate* AIR 1958 SC 535 held as under:

"The words of statute, when there is doubt about their meanings, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained."

7. It is a settled principle of law that the Court can look into the objects and reasons of an enactment, if necessary, for the purposes of assessing the legislative intent. Normally the objects and reasons of the statute are recognized parameters of the index to the mind of the framers of law. To enable the Court to adopt an object-oriented approach, as well to ensure that the legislative futility is ruled out, these provisions would have to be given reasonably liberal construction, as a strict or restricted interpretation may defeat the purpose of the Act, which is to ensure that a reinstated workman is not exposed to starvation during prolonged litigation. We may appropriately refer at this stage the judgment of the Supreme Court in *Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others*, where the Court held as under:

"The statement of objects and reasons need to be looked into though not by itself a necessary aid as an aid to construction only if necessary. To assess the intent of the Legislature in the event of there being any confusion, statement of objects and reasons may be looked into and no exception can be taken. Therefore this is not an indispensable requirement but when faced with an imperative need to appreciate the proper intent of the Legislature statement may be looked into but not otherwise."

8. Reference can also be made to the judgments of the Supreme Court and a full Bench of this Court, in the case of *Commissioner of Income Tax, Madhya Pradesh and Bhopal v. Smt. Sodra Devi* AIR 1975 SC 832; *Doomamu Vs. Mehar Chand*, .

9. In the light of the above enunciated principles we would revert back to the language of Section 17(b) of the Act. The plain reading of this provision shows the legislative intentment to give certain protection to the workman during the pendency of the proceedings before the High Court or the Supreme Court in relation to payment of wages. The provisions further show the liability created by statute upon an employer for payment of such wages. This entitlement is subject to the proviso to the said section. The essential ingredients of this provision appears to be:

(1) By its award direct reinstatement of any workman.

(2) The employer prefers any proceedings against such award in the High Court or Supreme Court.

(3) The employer shall be liable to pay such workman during the pendency of such proceedings full wages drawn by the workman. The liability to pay arises if the workman had not been employed in any establishment during such period and an affidavit to that effect is filed in Court.

(4) Even if the above conditions exist but it is shown to the satisfaction of the Court that workman had been employed and receiving adequate remuneration during any such period or part thereof then no back wages would be payable for that period.

10. The emphasis of Legislature is on the expression "reinstatement" rather than on an "award". Where the workman is reinstated and the Management prefers any proceedings before the High Court or Supreme Court, the object appears to be that the workman if he was not gainfully employed during the relevant period should not starve and should be able to contest the proceedings before the Court meaningfully and without being deprived of the wages which he was entitled to receive under the terms of the award.

11. Obviously the intention of the Legislature was to provide definite protection to the workman against the long litigation and exploitation by the affluent Management. As such these welfare provisions are directly relatable to the prescribed benefit to the workman under various provisions of the statute. The provisions of the Act have been amended from time-to-time in light of the experience gained in its actual working, case law and industrial relation policy of the Government and while keeping in mind the recommendations of National Commission of Labour which had made an in-depth study of the industrial relations, procedure and had identified number of areas which needed further amendments. As already indicated above, the provisions of Section 1(b) of the Act were inserted by Act 46 of 1982 however, it came into force with effect from 21st August, 1984.

12. This legislation provides the machinery and procedure for investigation and settlement of industrial disputes. The paramount object of the statute was to promote industrial harmony and expeditious settlement of industrial disputes. The cumulative effects of all amendments made to this law from time-to-time are intended to provide model grievance redressal procedure with more emphasis on reducing the time factor in all matters covered under the provisions of the Act and shorten the various procedures including voluntary settlement mechanism, conciliation proceeding, reference and pending proceedings before various Courts by fixation of time-limits. Another emphasized aspect of various amendments related to amelioration of the methodology and entitlement to receive wages by a reinstated workman. The objects and reasons which are index to the legislative mind, as stated in the enactment itself while introducing Section 17-B of the Act, in specific and with some emphasis refers to the following clause:

"(vi) It is observed that when Labour Courts pass awards of reinstatement, these are often contested by an employer in Supreme Court and High Courts. The

delay in the implementation of the award caused hardship to the workmen concerned. It is, Therefore, proposed to provide for payment of wages last drawn by the workmen concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or the High Court.

13. Section 2(s) of the Act defines the expression workman which means any person including an apprentice employed in an industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it also includes for the purposes of any proceedings a person who has been dismissed, discharged, retrenched in connection with such action except to the extent what is specifically excluded under the definition itself. The framers of law have given a very wide meaning to this expression so as to practically cover every person connected with the industrial functioning and growth in the country. In fact, in common parlance the expression "workman" can easily be equated to "common man". Ours is a socialistic State as depicted under the Preamble. Socialism contemplates distribution of national resources in a manner so as to reach common man. With due regard to human dignity, the Constitutional mandate is to protect the weaker sections of the society. In the simpler language, the objection of Industrial Law is to derive a balance between industrial development and industrial harmony while keeping the socio-economic standards duly protected for the workman. Indicating the need of striking an appropriate balance in social legislations reference to the observations of the Supreme Court as quoted by Justice R.C. Lahoti, author of the book "Preamble-- The spirit and backbone of the Constitution of India" can be usefully referred to:

"In *Excel Wear v. Union of India*, the Court quoted Justice Frankfurter's views on balance of interest--

I cannot agree in treating what is essentially a problem of striking balance between the competing interests as an exercise in absolutes."

14. The legislative object of the Act purposely indicates that it intends to provide definite protection to the workmen against any exploitation. It also vests powers of wide discretion in the Court so as to enable it to do complete and effective justice between the parties which is illustrated by introduction of Section 11 of the Act by amending Act 47 of 1971. The Tribunal or the Labour Court thus was empowered to interfere in the quantum of punishment inflicted upon a workman on conclusion of a domestic inquiry if the material placed before the Tribunal so required. These provisions must be read in conjunction with the provisions of Section 17B of the Act and their cumulative reading would demonstratively accept that the application of principle of liberal and benevolent interpretation could safely be applied to these provisions so as to achieve the object and purpose of legislation.

15. The legislative intendment certainly is to provide protection to a workman who has been specifically ordered to be reinstated by a award or by necessary implication of law, to receive full last drawn wages during the pendency of the

proceedings preferred by an employer against an order or award of the Tribunal in favor of the workman before the High Court or the Supreme Court. There can be no doubt that on a plain reading of the provisions of Section 17B it imposes an unambiguous liability on the employer to pay such wages except for the exception carved out in the section itself. Therefore, a narrower or strict interpretation of these provisions would neither meet the ends of justice nor the legislative object, comparative discussion and interpretative distinctions between the provisions of Sections 17B and 33(2)(b) of the Act:

Having discussed at some length on the legislative intendment behind these provisions now we shall proceed to discuss the interpretation of these provisions on first principles and then refer to the judgments having bearing on the question referred to this Bench for determination. Section 17B of the Act refers to an award where there is a direction for reinstatement of the workman and where the employer prefers any proceedings against such award in the High Court or the Supreme Court. The language of the section unambiguously creates a liability upon the employer and the employer shall be liable to pay such workman during the pendency of said proceedings full wages last drawn by him. This liability is subject to the compliance of the provisions of the Act by the workman as well as the proviso that the workman was not gainfully employed for the relevant period. The expression award has been defined in Section 2(b) of the Act which reads as under--

"2(b) award means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made u/s 10-A."

16. From the above definition it is clear that an interim or final determination of any industrial dispute as well as any question relating thereto by the Labour Court is an award. Industrial dispute has been defined in Section 2(k) of the Act to mean any dispute or difference between employers and employees or between employers or workmen or between workmen or workmen which is connected with the employment or unemployment or the terms of employment or with the conditions of labour of any person. The cumulative effect of bare reading of these three provisions demonstrates that the expressions have been widely worded so as to take within their ambit and scope disputes relatable to any person who satisfy the conditions stated in these provisions. To give strict interpretation to these provisions would not be in comity to the object of the Act. The dispute could relate to any or all of the matters indicated in Section 2(k) of the Act determination of which at interim or final stage would be an award and if such an award directs reinstatement may be along with other relief is the provisions of Section 17B of the Act would be attracted creating a definite liability upon the employer in terms of these provisions. For the better and clear understanding of the provisions the language used by the Legislature may be examined discernibly so as to give an effective meaning to every expression used in the section without attaching undue significance to the expression "award" and de hors the

expression of "direct reinstatement". The determination of any matter which is an "award" within the meaning of the Act, but does not specifically direct reinstatement, would not per se attract the provisions of Section 17B of the Act. In other words, the relief of reinstatement is the very foundation of seeking a relief under that provision. Once a direction for reinstatement exists by a specific order or as an unavoidable consequence in law, the workman would be entitled to receive last drawn full wages during the pendency of the proceedings before the High Court or Supreme Court which have been preferred by the employer against such an award or direction. The Labour Court/Industrial Tribunal are required to follow the prescribed procedure for giving an interim or a final award, in relation to a dispute referred to it u/s 10 of the Act. While answering the reference, the Court shall obviously permit the parties to complete their pleadings, lead evidence in support of their case and after hearing the parties, prepare a report or award as per requirement of law. Section 17 of the Act requires every report or award of the Board or Labour Court to be published in such a manner as the appropriate government may think fit. u/s 17A of the Act, the "award" shall become enforceable on the expiry of 30 days from the date of its publication in terms of Section 17 of the Act. The "award" then can be executed and the breach of terms of an award can invite penal consequences.

17. The provisions of Section 33(2)(b) of the Act imposes an obligation upon the employer to seek approval of its action in discharging and dismissing an employee for misconduct, if it is so done during the pendency of the proceedings in respect of an industrial dispute before a competent forum. Where the misconduct of the workman is connected to the subject matter in regard to which reference is pending before the appropriate forum, the employer shall seek permission and where such a misconduct is not connected with the referred dispute, it would take approval of the action taken by the Management in regard to discharge or dismissal of the employee by way of punishment. The employer is also under an obligation to comply with the conditions stipulated in the proviso to Section 33(2)(b) of the Act and pay one month's wages to the workman along with such order and also file an application for grant of the approval/permission as afore-referred. The provisions of the Act are silent in regard to the consequences which shall flow in the event the application filed by the workman u/s 33(2)(b) of the Act is rejected by the Tribunal. Once the employer has complied with the requirements of the section and approval is granted by the Tribunal or the Authority, nothing further is required to be done by the employer and it is open to the workman against whom such approval is granted to take such other steps as are permissible under law. The legislative scheme of the Act does not in terms strip late any specific remedy or consequences in the event of denial of approval by the competent forum. This lacuna in the provisions of the Act has been supplied by judicial pronouncements and a complete remedial bridge has been provided to fill up this gap by the judgments of the Supreme Court. In the case of *M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam*, the Supreme Court was concerned with the right

of a workman after the application filed by the employer for approval of order of dismissal or discharge from service is refused by the Tribunal. This question v/as answered by the Supreme Court in great detail and as under:

"12. Sub-section (2)-of Section 33 deals with alteration in the conditions of service or the discharge or punishment by dismissal or otherwise of the workman concerned in the pending dispute but in regard to any matter not connected with such pending dispute. Though this provision also places a ban in regard to matters not connected with the pending dispute, it leaves the employer free to discharge or dismiss a workman by paying wages for one month and making an application to the authority dealing with the pending proceedings for its "approval" of the action taken. There is a distinction between matters connected with the industrial dispute and those unconnected with it. Thus, a balance between the interests of the workmen and the employer is sought to be maintained in the provisions of Section 33. The action taken u/s 33(2) will become effective only if "approval" is granted. If the "approval" is refused, the order of dismissal will be invalid and inoperative in law. In other words, the order of dismissal has to be treated as non est and the workman will be taken never to have been dismissed.

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 orders 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 filed u/s 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 employee the latter is entitled to have his right enforced by filing 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 Tribunal is 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 filed 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 inquiry

initiated against him.

17. In the facts and circumstances of the case it is our view that the High Court committed no illegality in issuing a direction to the appellant for reinstating the respondent and pay him the back wages."

18. The above decision of the Supreme Court was referred with approval and the principle enunciated even explained in greater depth by the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, . In this case Their Lordships of the Supreme Court specifically referred that the law as stated in the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, was not correct disposition of law in so far as it stated that the order of dismissing the workman in violation of provisions of Section 33(2)(b) of the Act would not be void and inoperative and workman would not be entitled to maintain an application for determination and payment of wages u/s 33(c)(2) of the Act. Finally the Supreme Court held as under:

"14. Where an application is made u/s 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization of unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never has been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed, consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position, there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint u/s 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a

complaint u/s 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside u/s 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

16. Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy u/s 33A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside u/s 33A. There is nothing in Sections 31, 33 and 33A to suggest otherwise even reading them together in context. These sections are intended to serve different purposes."

19. In view of the above enunciated law it is really not necessary for us to discuss the matter in any greater detail. Suffice it to state that once an application filed by the employer before the competent authority u/s 33(2)(b) of the Act is rejected the order of dismissal against the workman is non est and inoperative in law. Inevitable consequence thereof is that for all intent and purposes the workman continues to be in employment and is entitled to all benefits. Now, it cannot be stated that the workman is remedy less in a situation where application of the employer u/s 33(2)(b) of the Act has been rejected. He could invoke provisions of Section 33C(2) as far as the monetary benefits are concerned and approach the High Court for issuance of a prerogative writ jurisdiction of the High Court under Article 226 of the Constitution of India. Rejection of an application u/s 33(2)(b) is also a determination within the ambit of industrial jurisprudence. The application for approval filed by the employer is contested by the workman on all fronts including the merits of the case. Parties are permitted to lead evidence as per practice of the Labour Court/Tribunal and provisions of the Act. May be the scope of jurisdiction u/s 33(2)(b) of the Industrial Tribunal is not as wide as it is while answering a reference made to it by the appropriate Government u/s 10 of the Act. But it can hardly be disputed that there is complete and final determination by the Industrial Tribunal while deciding an application u/s 33(2)(b) of the Act. In the event it rejects the application and declines to grant approval prayed for then in terms of the above law the order of dismissal is ineffective and inconsequential right from its very inception.

20. Under Article 141 of the Constitution the law declared by the Supreme Court shall be binding on all Courts within the territory of India while under Article 142 any order made by the Supreme Court shall be enforceable throughout the

territory of India in such a manner as may be prescribed by or under any law made by the Parliament. The judgments of the Supreme Court in the case of M.D., Tamil Nadu State Transport Corporation v. Neethivilangah Kumbakonam (supra), and Jaipur Zila Sahakari Bhoomi Bank Ltd. Vikas v. Shri Ram Gopal Sharma and Ors. (supra) have clearly enunciated the law in relation to consequences of an order of dismissal and remedies available to the workman in the event the application of the employer u/s 33(2)(b) of the Act is rejected by the Industrial Tribunal. This law would be operative and effective and all concerned are required to implement such law without protest and demur and ensure that unless proper meaning is given to the order of dismissal it will be invalid and inoperative in law...". This being the position there is no need for a separate or specific order for his reinstatement. The employer is bound to treat the employee as contenting in service and give him all the consequential benefits.

21. Pervasive analysis of the contents of Section 17B of the Act and the judgments of the Supreme Court in the above cases laying down the law while interpreting the provisions of Section 33(2)(b) of the Act discernibly predicate the principle that a workman is entitled to receive full wages last drawn by him u/s 17B of the Act where the Labour Court upon reference finds action of the employer in dismissing the workman illegal or unjustified and directs by award his reinstatement u/s 17B of the Act subject to the satisfaction of the conditions stated therein on the one hand, while on the other wherever the action of the employer is found to be unjustified or illegal and the Industrial Tribunal rejects an application of the employer u/s 33(2)(b) of the Act the workman is entitled to receive all benefits including full wages last drawn by him at the time of termination of his services by "deemed fiction of law". The order of dismissal or termination upon rejection of application u/s 33(2)(b) is rendered non est and inoperative. Continuity in service with consequential benefits is thus an inevitable result of such order of rejection. This is so in view of the judicial pronouncements which are the law of the land. In one case the workman gets the benefits in terms of the provisions of the Statute while in the other on the foundation of the Judge made law, both of which are equally enforceable under the constitutional provisions of the country. Further more, *flex nil rustra jubet*, directs that law commands nothing vainly, the legislative law or the law which emerges from judicial pronouncements should be given effect to. An approach which would render either of them ineffective or futile would not be permissible, the maxim *verb cum effectual accipienda sunt* would clearly apply to such situations and need for giving a wider and effective meaning to the expressions of the provisions, to achieve only the object enunciated in the scheme of the Statute as well as in the judicial pronouncements. Discussion on merits of rival contentions:

Recapitulation of admitted facts would be necessary in order to examine the merit or otherwise of the rival contentions placed before us. The workman who was working as Chowkidar with Delhi Transport Corporation since 20.5.1988 was removed from service vide order dated 19.5.1993 on the plea of misconduct. The misconduct related to unauthorised repeated absence of workman from duty and

in particular for unauthorised absence of 52 days during the mentioned period. The management had paid the workman one month wages as contemplated u/s 33(2)(b) of the Act by money order and they had also filed an application u/s 33(2)(b) of the Act before the Industrial Tribunal, Delhi. The application was contested by the workman, parties led evidence and after hearing them the application was rejected by the Tribunal vide its order dated 19.8.1999. We have noticed these facts again only with a view to co-relate our conclusions to the facts of the case. However, we are not called upon in this reference to decide the merits of the dispute but only to answer the limited question indicated in the order of reference. In the backdrop of the above facts the learned Counsel appearing for the petitioner contended that the expression "award" has to be given its restricted meaning and the provisions of Section 17B on their plain reading cannot take into its ambit the cases where the employer has preferred the proceedings before the High Court against order of the Tribunal rejecting its application u/s 33(2)(b) of the Act. In order to substantiate his submission he relied upon the judgments of the Supreme Court in the cases of the State Bank of India v. Shri N. Sundara Money AIR 1976 SC 111 and Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., .

The law enunciated in these judgments is not in any way in controversy before us. In fact, this has been the consistent view of the Supreme Court that while interpreting the Court should apply the plain rule of construction and need not attempt to legislate. In the case of Sundara Money (supra) the Court held as under--

"6. The stele gram of the employment order must now be studied to ascertain which of the rival meanings Counsel have pressed deserves preference. Statutory construction, when Courts consider welfare legislation with an economic justice bias, cannot turn on cold print glorified as grammatical construction but on teleological purpose and protective intendment. Here Sections 25F, 25B and 2(oo) have a workers mission and the input of part IV of the Constitution also underscores this benignant approach.

"8. Such cases are outside the concept of "retrenchment" and cannot entail the burdensome conditions of Section 25F. Of course, that a nine-days" employment, hedged in with an express condition of temporariness and automatic cessation, may look like being in a different street (if we may use a colloquialism) from telling a man off by retrenching him. To retrench is to cut down. You cannot retrench without trenching or cutting. But dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation. Section 2(oo) is the master of the situation and the Court cannot truncate its amplitude.

While in the case of Steel Authority of India (supra) Their Lordships of the Supreme Court held as under:

"25. It is a well-settled proposition of law that the function of the Court is to interpret the statute to ascertain the intent of the Legislature-Parliament. Where the language of the statute is clear and explicit the Court must give effect to it because in that case words of the statute unequivocally speak of the intention of the Legislature. This rule of literal interpretation has to be adhered to and a provision in the statute has to be understood in its ordinary natural sense unless the Court finds that the provision sought to be interpreted is vague or obscurely worded in which event the other principles of interpretation may be called in aid. A plain reading of the said phrase, under interpretation, shows that it is lucid and clear. There is no obscurity, no ambiguity and no abstruseness. Therefore the words used therein must be construed in their natural ordinary meaning as commonly understood.

22. The learned Counsel appearing for the respondents while relying upon various judgments, as already mentioned above contended that the provisions of the Industrial Disputes Act should be construed liberally and benevolently so as to achieve the social goal specified in the enactment itself. It is also contended that drawing of a distinction between an award directing reinstatement of the workman and an order rejecting the application u/s 33(2)(b) of the Act, which has an inbuilt consequential direction of reinstatement of the workman would lead to undesirable results which may ultimately frustrate the very object of the Act. The learned Counsel appearing for the petitioner argued with some emphasis that the consequences and execution of an award and an order passed by the Tribunal u/s 33(2)(b) of the Industrial Disputes Act, are entirely distinct and different in terms of the statute and as such the expression "order" cannot be read into or equated to the expression "award". In support of this contention he also referred to certain provisions like Section 17A, Section 29A and penal consequences for default of complying with the terms of the award. There is no doubt that the award passed upon complete determination of an industrial dispute referred to the Labour Court u/s 10(1)(c) of the Act has a wider jurisdiction in comparison to the jurisdiction exercisable by the Industrial Tribunal u/s 33(2)(b) of the Act. The award attains a finality once it is published and the award becomes enforceable on the expiry of 30 days from the date of its publication. The order passed by the Industrial Tribunal u/s 33(2)(b) of the Act, particularly where it rejects the application of the Management, becomes operative forthwith and as per settled law, no further order is required to be passed and the workman continues to be in service. If the employer contravenes the provisions of Section 33 of the Act, he is liable to be punished u/s 31 of the Act and the Industrial Tribunal would have the jurisdiction to pass appropriate orders upon an application by the aggrieved workman u/s 33A of the Act.

23. Upon final adjudication in both cases, the workman is placed at somewhat similar situation. In one case the workman would be entitled to claim wages in terms of Section 17B of the Act on the strength of a specific stipulation of reinstatement in an award, while in the other there is no reason why he should not be permitted to invoke the same provisions as his claim is founded on the

law of the land. Claim of reinstatement and consequential benefits are unequivocal entitlements of the workman in both the situations. In both cases they are entitled to consequences of reinstatement because of an order and/or by fiction of law. The purpose and object in both cases would be common so as to prevent starvation of the workman during the pendency of the litigation before the High Court or the Supreme Court in the event the employer prefers such proceedings against the award and/or the order. The expression "award" u/s 2(b) is incapable of being given a restricted or a limited meaning. The expression of any question relating thereto indicates the wide meaning i.e. intended to be given by the framers of law to this expression. Of course linguistic distinction between the word "award" and "an order" cannot be wiped out by interpretative process. In substance, it is not necessary for the Court to substitute the word award by an order as used in Section 17B of the Act. The provisions of section must be read together and every word of the section should be given a meaning so as to give it its true effect, and achieve the purpose and object of the Statute. We have already discussed above that the award by itself cannot be read in isolation and given a meaning so as to render the expression directing reinstatement ineffective or inconsequential.

24. The language of Section 17-B of the Act cannot be stated to be unambiguous but the rule of liberal construction would have to be applied to the interpretation of this rule so as to keep in line with the settled can none of interpretative jurisprudence and to achieve the social goal underlining this provision. In order to determine the scheme and object of the legislation, it is necessary to read the Act as a whole and not attempt to interpret a word or a line of the provisions, in isolation. The term "award" should be read in complete conjunction with the direction for reinstatement and an order thus passed u/s 33(2)(b) of the Act would, by necessary implication, incorporate a direction as in law the services of the workman were never terminated. Furthermore, an interpretation which would help in avoiding multiplicity of litigation should be more acceptable to the one which would generate more litigations. Why the workman should be compelled to keep on litigating even after his order of termination/dismissal has been found to be ineffective and inoperative? Therefore, it would meet the legislative object as well as be in the interest of administration of justice that an order which is passed upon complete determination and after complete proceedings be treated and construed as a part of expression "award directing reinstatement" having all attributes that of an award.

25. Why the workman should be compelled to commence avoidable litigation even when by operation of law of the land the order of termination/ dismissal passed by the employer against him is non est, ineffective and inoperative in law. The order u/s 33(2)(b) of the Act is passed by the Tribunal after it has taken complete proceedings and determined the controversy in accordance with law and after affording full opportunity to the parties to lead the evidence in support of their claim. Culmination of such judicial proceedings would have to be, thus, treated analogous to and covered under the expression of "award directing

reinstatement".

26. Various judgments of different High Courts including this Court have been brought to our notice. A Division Bench of the Andhra Pradesh High Court in the case of V. John v. Chief General Manager, Singareni Collieries Co. Ltd. and Anr. 1996 Lab.IC 70, took the view that the award of reinstatement of workman as contemplated u/s 17-B of the Act was not confined to an award in an industrial dispute to which a reference is made u/s 10 of the Act and full potential of the expression "award" as defined u/s 2(b) of the Act is applied to it, and came to the conclusion that there was no reason as to why in giving a liberal interpretation to the provisions of Section 17-B of the Act be not given any such decision of Industrial Tribunal u/s 33(2)(b) of the Act cannot be termed as an "award" within the meaning of Section 17-B of the said Act. A Division Bench of Calcutta High Court in the case of Bata India Ltd. v. Seventh Industrial Tribunal, East Bengal and Ors. 1995 I LLJ 25, also took the view that disapproving order of dismissal is certainly a matter relating to employment or non-employment of the workman and is certainly a determination by the Tribunal in respect thereof. Giving liberal interpretation to the provisions of Section 17-B of the Act, the decision of Industrial Tribunal u/s 33(2)(b) of the Act can be termed as an award within the meaning of Section 17-B of the said Act. In this case itself the Court expressed the view that Section 2(b) and Section 2(k) of the Act themselves are of the widest amplitude and to take out an order u/s 33(2)(b) of the Act outside the scope of this provision would not be fair. Single Judge of Rajasthan High Court in the case of Hotel Mansingh Vs. Judge, Industrial Tribunal and Another, held that the provisions of Section 17-B of the Act being beneficial legislation, its provisions should be equally applicable to the cases in which employer challenges the order of the Tribunal rejecting approval u/s 33(2)(b) of the Act. The effect of the order is to put the workman back in service in as much the same as an award made in reference u/s 2(k) or 2(a) of the Act.

27. The same view was expressed by a Division Bench of this Court in the case of Delhi Transport Corporation v. Dalip Kumar, Thakur Singh, LPA 426/2001 decided on 6.12.2001 which is one of the referred judgments in the order of reference.

28. A Single Judge of Delhi High Court in the case of Delhi Transport Corporation Vs. The Presiding Officer, Industrial Tribunal No. II and Another, , also took the view that rejection of an application u/s 33(2)(b) of the Act for approval of workman's dismissal is an award within the meaning of provisions of Section 17-B of the Act.

29. On the contrary, another Bench of Calcutta High Court in the case of Westinghouse Saxby Farmer Ltd. v. State of West Bengal and Ors 1988 I LLJ 654 took the view that an order of Conciliation Officer u/s 33(5) of the Act cannot come within the phrase "award directing reinstatement" appearing in Section 17-B of the Act, having regard to the nature of limited jurisdiction of the authorities u/s 34. The Court was of the opinion that the expression "award" could not take in its ambit the order of the Conciliation Officer, as the authority itself could not

pass an award. It also expressed the view that the order u/s 33(5) had none of the features specified in Section 17-A regarding publication of an award.

30. A Division Bench of Orissa High Court in the case of *I.D.L. Chemicals Ltd. v. S.R. Tamma and Anr.* 1989 58 FLR 28 expressed the view that the provisions of Section 17-B could not be applied to an order of rejection u/s 33(2)(b) of the Act as reinstatement is not directed specifically by an order under those provisions. However, the Bench noticed that reinstatement is the ordinary consequence. A Bench of Gujarat High Court in the case of *Gujarat State Road Transport Corporation Vs. Jarnal Sinh D. Ramgadhia*, decided that the Legislature has restricted the scope of the beneficial provisions u/s 17-B of the Act to the awards of these judicial authorities. It is possible to extend the same benefits to the orders of these authorities u/s 33 of the Act. However, the same logic could not be extended further to the discrimination of conciliation authorities u/s 33(2)(b) of the Act in absence of a specific provision in that behalf u/s 17-B of the Act.

31. The Bombay High Court in the case of *Air India Ltd. v. P.K. Upadhyay and Anr.* 1999 3 LLM 963 took the view that Section 17-B of the Act was enacted as a remedial measure, as a piece of beneficial social welfare legislation aiming at alleviating the hardship of the workman, who despite the decision of the Labour Court or Tribunal was kept out of employment. However, the order refusing to approve u/s 33(2)(b) of the Act could not be treated as an award, but wages could be awarded to the workman in exercise of powers of the Court under Article 226 of the Constitution of India.

32. A Division Bench of this Court in the case of *Sardar Singh v. Delhi Transport Corporation*, LPA No. 361/2002 took somewhat similar view and held that an order or approval u/s 33(2)(b) of the Act is not an award and as such the provisions of Section 17-B could not be attracted. However, while exercising jurisdiction under Article 226 of the Constitution of India, in its discretionary jurisdiction, can impose condition while passing an order of stay of such order of the Labour Court/Tribunal.

33. In the case of *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, while determining the retrospective effect of the newly introduced provisions of Section 17B of the Act, the Supreme Court held that there are no words in the section to compel the Court to hold that it cannot operate retrospectively and in such a situation Court should give a purposive interpretation to the section. While looking into the objects and reasons which according to the judgments provide an insight into the background why the section was introduced and also the fact that Court would necessarily not take a rigid view in relation to interpretation of the provisions where the object of enactment is to provide benefit to the persons in whose favor the provision was enacted. Though the views expressed by different Courts to some extent are divergent, but there is by and large unanimity in all the referred decisions that the provisions of the Act need liberal interpretation and it is undoubtedly a beneficial legislation enacted for protection of the workman against exploitation,

resulting from prolonged litigation which normally is stretched as a result of the affluent employer preferring proceedings before the higher Court against every order. It also cannot be disputed that the order of dismissal affects de facto determination of services and this attains de jure character only after the action of the employer is approved by the Industrial Tribunal in exercise of its powers. There is complete and comprehensive determination by the Industrial Tribunal while deciding such an application. It is in compliance of a statutory directive and its result cannot be said to have no legal consequence. May be one could have expressed me doubt earlier but after the pronouncement of the judgment of the Supreme Court in the case of *M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam, and Jaipur Zila Sahakari Bhoomi Bank Ltd., Vikas v. Shri Ram Gopal Sharma and Ors.*, (supra), where the view expressed in *Punjab Bank*'s case was not accepted by the Court, the consequence of such an order stands completely defined and leaves no scope for an employer not to reinstate the workman except for an order to the contrary by the Court of competent jurisdiction. The bare reading of Section 17 of the Act, either expressly or by compulsive interpretation, does not indicate that the law-makers intended to exclude such an order from the purview of the said section and confine it only to an "award" in its strict sense. The principle of exclusion can be applied where it is explicitly stated in the statute. Unanimity of judicial view in all the above referred judgments clearly shows that Courts have uniformly applied the rule of liberal and purposive interpretation while treating the object and reasons of the Act as an insight to the necessity for legislation. No doubt, in terms of the provisions of Section 33(2)(b) of the Act and as stated by the Supreme Court in the case of *The Lord Krishna Textile Mills Vs. Its Workmen*, the Tribunal exercise its limited jurisdiction but it is a complete and final determination, quite analogous to the conclusions of the proceedings upon a reference to the Labour Court u/s 10 of the Industrial Disputes Act. The jurisdiction under the two provisions may not be identical in absolute terms, but still it is a comprehensive and complete adjudication leading to determination by a labour Court or Tribunal of an industrial dispute or any question relating thereto. It will also include the matters of employment or non-employment or variation in terms of the employment. The action of the employer in terminating the services of the petitioner, subject to statutory compliance indicated in Section 33(2)(b) is a question relating to employment or non-employment. The determination may not be an award in stricto sensor having not been required to be published in terms of Section 17-A and its manner of execution may be somewhat at variance, but still the order u/s 33(2)(b) has all the requisite ingredients of a complete and final determination by the Labour Court and the Industrial Tribunal entitling the workman with relief of reinstatement in law. *Quando lex est specialist ratio autem generalise general interalex est intelligenda.* The Industrial Law is a special law but its reasons are general and thus must be generally understood.

34. We may examine this aspect even from another point of view. The word

"judgment" means declaration or final determination of rights of the parties in the matter brought before the Court, while a "final order" means an order which finally determines the rights of the parties and brings the case to an end. Both these words were given the same meaning by the Privy Council in construing Section 109 of the Code of Civil Procedure, 1908 as well as by the Federal Court in AIR 1920 PC 80 in the case of AIR 1949 1 (Federal Court) and Ramchand Manjimal and Goverdhandas AIR 1920 PC 86. Merely because the scope of jurisdiction exercisable by the Court or a Tribunal has some noticeable difference, should not be treated as paramount consideration for giving narrower interpretation to the provisions of a section, particularly when such restricted interpretation may defeat the very intent and object of the legislation, we are of the considered opinion that the view taken by the Delhi High Court, Andhra Pradesh High Court, Calcutta High Court and Rajasthan High Court giving a liberal construction to the provisions of Section 17-B of the Act is more in consonance with the legislative object of these provisions and the scheme underlining the Industrial Disputes Act. The view taken by the Division Bench of this Court in LPA No. 426/2001, as mentioned in the order of reference, is more purposive, objective exposition of law, particularly in view of the principles enunciated in the judgments of the Supreme Court in the case of M.D., Tamil Nadu State Transport Corporation and Jaipur Zila Sahakari Bhoomi Bank (supra).

35. Thus, our answer to the following formulated question as to whether the provisions of Section 17-B of the Industrial Disputes Act will be applicable in a case where the management in the writ petition has challenged the order of the Labour Court/Industrial Tribunal whereby its application u/s 33(2)(b) of the Act seeking approval of the order of dismissal was dismissed by such Court or Tribunal is as under:

"The provisions of Section 17-B of the Industrial Disputes Act will be applicable in a case where the management in the writ petition has challenged the order of the Labour Court/Industrial Tribunal whereby its application u/s 33(2)(b) of the Act seeking approval of the order of dismissal was dismissed by such Court or Tribunal, subject to the conditions stated in Section 17B itself."

36. Having answered the question as aforenoticed, we direct that the matter be listed before the appropriate Bench for its disposal in accordance with law.