

(2018) 10 KAR CK 0015

In the Karnataka High Court

Case No : Writ Appeal No. 200112 of 2016, 200251 of 2016 (L-KSRTC)

Divisional Controller

APPELLANT

Vs

Raghavendra S/o Vasant Rao Desai

RESPONDENT

Date of Decision : 26-10-2018

Acts Referred:

Karnataka High Court Act, 1961 — Section 4

Industrial Disputes Act, 1947 — Section 10(4A), 10(1)(c), 11, 33, 33A, 33(2)(b)

Citation : (2018) 10 KAR CK 0015

Hon'ble Judges : S. Sujatha, J; Mohammad Nawaz, J

Bench : Division Bench

Advocate : Subhash Mallapur, P. Vilaskumar

Final Decision : Dismissed

Judgement

1. These are intra Court appeals filed under Section 4 of the Karnataka High Court Act, 1961 by the appellant-Corporation, challenging the order of

the learned Single Judge dated 16.11.2015 passed in Writ Petition No.81922/2011 and allied matters.

2. The respondent herein was appointed as Conductor in the appellant-Corporation at Vijayapur Division. The appellant-Corporation dismissed the

respondent-workman from service on the charges of pilferage alleged to have been committed by him. Against the order of dismissal passed by the

Corporation, the respondent-workman had raised a dispute in KID No.42/2010 before the Labour Court, which came to be set aside by the award

passed by the Labour Court on 25.11.2010, accepting the primary ground raised by the respondent-workman that no approval was obtained by the

appellant-Corporation under Section 33(2)(b) of the Industrial Disputes Act, 1947 (â??Actâ?? for short) before passing the order of dismissal against

the workman, albeit I.D.No.121/2009 and I.D.No.126/2009 were pending before the Industrial Tribunal, Hubli. Both the workman and the Corporation had challenged the award before this Court in Writ Petition No.81922/2011 C/W Writ Petition No.80782/2011, which came to be disposed of by this Court at the first instance by the order dated 07.08.2012, whereby the writ petition filed by the management-Corporation was dismissed. However, the writ petition filed by the conductor-workman was allowed in part and the award of the Labour Court was modified, directing reinstatement with 25% backwages.

3. Aggrieved by the same, appellant-Corporation had filed Writ Appeal No.200404/2014, wherein, the Division Bench of this Court by order dated 01.09.2014 was pleased to set aside the order passed by the learned Single Judge and remitted the matter for reconsideration. Pursuant to which, learned Single Judge reconsidered the matter and partly allowed the writ petition filed by the respondent-workman, observing that the earlier view taken by the learned Single Judge while disposing of the petitions is justifiable. Accordingly, the impugned award dated 25.11.2010 in KID No.42/2010 has been modified, directing reinstatement of the respondent-workman with 25% backwages, dismissing the writ petition filed by the appellant-Corporation.

4. Being aggrieved by the same, Corporation is in appeal reiterating the grounds urged that no approval under Section 33(2)(b) of the Act is mandatorily required for passing of the dismissal order during the pendency of main dispute in I.D.No.121/2009 and I.D.No.126/2009. Further, reference was made to the judgments of the Honâ??ble Apex Court in the case of Rajasthan State Road Transport Corporation and Another v. Satya Prakash reported in (2013) 9 SCC 232 as well as Managing Director, North-East Karnataka Road Transport Corporation v. Shivasharanappa reported in (2017) 16 SCC 540.

5. It was argued that the guidelines laid down by the Honâ??ble Apex Court in Rajasthan SRTCâ??s case supra, that wherever there seems violation, the workman has two choices either to bring to the notice of the Industrial Tribunal about the non-compliance of Section 33(2)(b) of the Act through an application or can challenge the order of dismissal invoking Section 10(4-A) or Section 10(1)(c) or Section 11 of the Act. Hence, when the

respondent has challenged the case on merit, the Labour Court had no jurisdiction to entertain the arguments of the respondent-workman regarding the non-compliance of Section 33(2)(b) of the Act. It was submitted that the workman after suffering an order on merits cannot take recourse to violation of the provisions of Section 33(2)(b) of the Act. The decision rendered in Rajasthan SRTC's case supra, should be considered as a guideline to the decision of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and Others reported in (2002) 2 SCC 244. It is only on said count, for not having considered and addressed by the learned Single Judge at the first instance inasmuch as the decision rendered by the Hon'ble Apex Court in Rajasthan SRTC's case supra, the matter was remitted to the learned Single Judge by the Division Bench. But however, the learned Single Judge again reiterated the view taken earlier, though referring to Rajasthan SRTC's case supra, which is not in conformity with the guidelines enunciated therein. It was thus argued that merely placing reliance on the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. supra, for not obtaining the approval under Section 33(2)(b) of the Act, the decision rendered by the Labour Court considering the case on merits would not be interfered with, in the writ petition proceedings.

6. Much emphasis is placed on the recent judgment of the Hon'ble Apex Court in the case of Shivasharanappa supra, to fortify his submissions.

7. Learned counsel Sri P. Vilaskumar appearing for the respondent-workman submitted that perceiving dichotomy between Sections 33(2)(b) and

Section 33-A of the Act, the Hon'ble Apex Court in the case of Management of Karur Vysya Bank Limited vs. S. Balakrishnan reported in

(2016) 12 SCC 221 in the context of absence of any approval under Section 33(2)(b) of the Act read with Section 33 held that, the jurisdiction under

Section 33(2)(b) is bound to be and in fact is narrower than the reference jurisdiction under Section 33-A and left the matter to the wise decision of

the Executive and legislative arm of the State. In the case of Rajasthan SRTC supra, it is observed by the Hon'ble Apex Court that the Tribunal

accepted that during a short span of service as a daily wager the workman had committed the misconduct which had been duly proved. Having held

so, the Tribunal could not have passed the order of reinstatement with continuity of service in favour of the respondent on the basis that initially the

management had committed a breach of Section 33(2)(b) of the Act. It was only for the reason that no necessary approval as required under the said

Section is obtained by the management, the complaint was filed by the workman under Section 33(A) of the Act, which was adjudicated like a

reference as required by the statute and return a finding in its abode that the workman had proved misconduct. In that context, it was held that there

was no occasion to pass the award of reinstatement with continuity in service.

8. Learned counsel also made an endeavor to distinguish the judgment of the Honâ??ble Apex Court in the case of Shivasharanappa supra, placing

reliance on the cognate Bench decision of this Court in Writ Appeal No.101511/2016 and allied matter in the case of The Managing Director,

Management of NWKRTC v. Sri Rupasingh R. Chavan (D.D.12.02.2018). Reliance is also placed on the Division Bench decision of this Court in the

case of The Divisional Controller, NEKRTC, Bidar Division vs. Venkat reported in ILR 2015 KAR 5177. Thus, it was argued that the judgment of

Constitutional Bench of the Honâ??ble Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.â??s case supra, holds the filed in respect of

seeking approval under Section 33(2)(b) of the Act when no complaint is filed by the workman under Section 33(A) of the Act. The learned Single

Judge considering these aspects has rightly allowed the writ petition filed by the workman, modifying the award of the Labour Court, directing

reinstatement of the conductor-workman with 25% backwages, which do not call for any interference by this Court.

9. We have heard the learned counsel appearing for the respective parties and perused the material on record.

10. Undisputed facts are that, the respondent-workman filed claim statement under Section 10 (4-A) of the Act, challenging the dismissal order passed

by the appellant-Corporation against him on the charges of pilferage while working as a conductor with the Corporation.

11. The Labour Court framed three issues as under:

1. Whether the domestic enquiry held against the claimant is fair and proper?

2. Whether the respondent is justified in dismissing the claimant from the service of the corporation as per order dated 6-5-2010?

3. If not, to what reliefs the claimant is entitled?

On appreciation of evidence, the issues were answered as under:

Issue No.1: Answered in the Affirmative as per the order dated 16-9-2010.

Issue No.2: In the Negative

Issue No.3: As per final order.

12. Finally, the claim statement filed by the claimant is allowed in part, declaring the order of dismissal of the claimant from the services dated

06.05.2010 as null and void. In the said proceedings, the specific contention raised by the respondent-workman was that the order of dismissal is illegal

and against law in view of the Industrial Disputes pending before the Hon'ble Industrial Tribunal, Hubli raised by the respondent-workman

aggrieved by the order of reduction of increments in I.D.No.121/2009 and I.D.No.126/2009 at Exs.W1 and W2 respectively. Thus, the bone of

contention was that no workman shall be discharged or dismissed except with express permission in writing from the authority is taken under Section

33(2)(b) of the Act, before which the proceeding is pending. Accepting the said contention of the respondent-workman, the Labour Court held that the

disciplinary authority has not acted in accordance with the provisions of Section 33(2)(b) of the Act before proceeding to dismiss the workman and

accordingly, the order of dismissal is in contravention of Section 33 of the Act. However, having held so, in the background of the articles of charge

framed against the claimant said to have been proved, directed the respondent therein to reinstate the claimant into services with continuity of service

and consequential benefits, subject to imposing of punishment of four annual increments with cumulative effect and by denying the backwages.

Learned Single Judge has modified the same, directing reinstatement of the conductor-workman with 25% backwages.

13. Now the question would be whether the plea raised by the respondent-workman inasmuch as non-compliance of the provisions of Section 33(2)(b)

of the Act in challenging the order of dismissal is justifiable in the facts and circumstances of the case?

14. It is apt to quote Sections 33 and 33A of the Act for ready reference, which runs thus:

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 Labor 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 workman 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 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, 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.

xxxxx

33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding.-Where an employer

contravenes the provisions of section 33 during the pendency of proceedings [before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal

or National Tribunal] any employee aggrieved by such contravention, may make a complaint in writing, [in the prescribed manner,-

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the

settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or ational Tribunal and on receipt of

such complaint, the arbitrator, Labour Court, Tribunal or National

Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the

provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.â??

15. In the first round, the Division Bench of this Court, having observed that the learned Single Judge has not considered the judgment of the

Honâ??ble Apex Court in Rajasthan SRTCâ??s case supra, had remitted the matter to the learned Single Judge for reconsideration.

16. In the case of Rajasthan SRTC supra, the Honâ??ble Apex Court, considering the scope of Section 33A and 33(2)(b) of the Act has observed

thus:

â??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 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 into 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.

24. Since the complaint was decided like a reference, and since we are holding that it ought to have been dismissed, we are not required to go into the

alternative submission that the appellant be given further liberty, to de novo

apply under Section 33 (2) (b) on the lines of the judgment in United Bank of India (supra). However, we make it clear that once the complaint under Section 33A is decided, there is no question of granting any such liberty.

Besides, we would like to observe that such liberty was given in United Bank of India (supra) â??considering the background facts of the caseâ? as stated in paragraph 11 of the said judgment.â??

17. In the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. supra, the Constitutional Bench of the Honâ??ble Apex Court has observed thus:

â??14. Where an application is made under Section 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 or 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 had 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 under Section 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 under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 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.

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.â??

18. The Co-ordinate Bench of this Court in the case of Venkat supra, considering the dictum laid down by the Honâ??ble Apex Court in the aforesaid judgments has observed thus:

â??11. In our opinion, the Labour Court or any adjudicating authority, before whom an order of dismissal of a workman is challenged, has jurisdiction

to examine as to whether the order of dismissal contravened Section 33 of the Act. In such a circumstance, it is not necessary for a workman to

invoke Section 33A of the Act. However, the workman is also entitled to make a complaint under Section 33A of the Act regarding contravention of

Section 33, to the authority before whom the proceeding referred to in Section 33 is or was pending.

12. In view of the above, we are unable to accept the contention urged by the learned counsel for the appellant, as a proceeding relating to an

industrial dispute was admittedly pending as on the date of dismissal of the respondent. The fact that an industrial dispute in I.D.No.148/2005 was

pending as on the date of ordering dismissal of the respondent was not disputed before the learned Single Judge. In this appeal also, counsel appearing

for the appellant fairly did not dispute this fact. Admittedly, the appellant had not filed any application under the proviso to Section 33(2)(b) of the Act

before the Industrial Tribunal for approval of the order dated 30.09.2007 dismissing the respondent-workman. In other words, the order of dismissal

dated 30.09.2007 contravened Section 33 of the Act is not in dispute. Hence, on the facts of the case, the learned Single Judge is justified in holding

that the order of dismissal of the respondent-workman also contravened Section 33 of the Act. Accordingly, we find no error in the order of the learned Single Judge to warrant interference. The appeal is devoid of merit and is

accordingly dismissed. Appeal dismissed.â??

19. Subsequently, in the case of Shivasharanappa supra, the Honâ??ble Apex Court has observed as under:

â??6. 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 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 *Karur Vysya Bank Ltd.*??

20. It is beneficial to quote the relevant paragraph of the judgment rendered by the Co-ordinate Bench of this Court in the case of *Sri Rupasingh R.*

Chavan supra.

??7. The argument of the learned counsel that no writ petition can be dismissed for not complying with Section 33(2)(b) of the Act cannot be countenanced in view of adjudication made on the validity of dismissal by the Labour Court and in the writ petition proceedings. In the case of *Shivasharanappa (supra)*, the Hon'ble Apex Court was dealing with the case, wherein this Court had interfered with the punishment imposed without considering the findings of the Labour Court on the correctness of the charges brought against the workman. The findings of the Labour Court on that issue was not challenged by the workman. In such circumstances, the High Court interfering with the punishment imposed held, is contrary to the view expressed by the Hon'ble Apex Court in *Management of Karur Vysya Bank Limited (supra)*, the situation herein is entirely different, Corporation has challenged the award of the Labour Court. In the said proceedings, keeping in view of the fact that the approval required under Section 33(2)(b) of the Act had not been taken due to mistaken notion of the legal position by the officers and considering the status of the Corporation being a public sector, in the interest of the public at large, the order of the Labour Court has been modified restricting the backwages to 50%. In the circumstances, the judgments referred to by the learned counsel for the Corporation is not

applicable to the facts of the present case. The evidence of MW1 does not prove the charges levelled against the respondent as viewed by the Tribunal.

Reasonability and credibility of material which are the relevant factors requires to be examined to reach the conclusion supports the case of the

workman, it is not on mere violations of departmental instructions, a conclusion is reached by the Labour Court. It is also observed that no principles of

natural justice was followed by the Enquiry Officer and the same has been accepted by the disciplinary authority. The judgment of the Constitutional

Bench of Jaipur Zila (supra) being not overruled, reliance placed by the learned Single Judge on the said judgment cannot be said to be irregular or

illegal.â??

21. In the light of these judgments, the applicability of Section 33(2)(b) of the Act to the present set of facts is examined.

22. In the present case, the claim statement was filed by the respondent-workman under Section 10(4-A) of the Act challenging the order of dismissal

dated 06.05.2010 mainly on the ground of the I.D.No.121/2009 and I.D.No.126/2009 raised by the claimant-workman being pending before the

Industrial Tribunal, Hubli and in such circumstances, no approval from the Industrial Tribunal was obtained to dismiss the claimant-workman from

services on the count of misconduct regarding alleged pilferage.

23. In the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. supra, the Constitutional Bench of Honâ??ble Apex Court has categorically

observed that the order of dismissal or discharge passed invoking Section 33(2)(b) brings an end of relationship of employer and employee from the

date of his dismissal or discharge but that order remains incomplete and inchoate as it is subject to approval of the authority under the said provision.

The relationship comes to an end de jure only when the authority grants approval. If approval is not given, it amounts to the order of discharge or

dismissal had never been passed. But, if the approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to

make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. This would save time to challenge

the order of approval in the pending industrial dispute between the parties by filing complaint under Section 33A instead of making efforts to raise an

industrial dispute. Section 33A is an enabling provision to an employee to make a

complaint, if aggrieved by the order of the approval granted.

Indisputably, in the present case, no approval being granted by the Industrial Tribunal under the proviso to Section 33(2)(b), there was no occasion for the respondent-workman to raise a complaint under Section 33A of the Act.

24. In the case of Rajasthan SRTC *supra*, within a short span of service as a daily wager, the workman had committed the misconduct which had been duly proved. No approval was sought for dismissal of the workman under Section 33(2)(b) of the Act. However, the workman had filed the complaint under Section 33A of the Act, which was adjudicated like a reference as required under the statute. In the said proceedings, the misconduct having been held to have been proved, the Honâ??ble Apex Court held that there is no question to hold that the termination shall still continued to be void and inoperative. It is thus made clear that once the complaint under Section 33A is decided, there is no question of granting any liberty, to de novo apply under Section 33(2)(b).

25. Similarly, in the case of Shivasharanappa *supra*, the Honâ??ble Apex Court while considering the case of a workman relating to the validity of the proceedings of the domestic enquiry in the background of the Labour Court deciding the question, whether the order of dismissal is proportionate to the legal misconduct, answering the same in favour of the management interfered by the High Court in the writ petition proceedings filed by the management inasmuch as the punishment imposed by the Labour Court, held that the High Court ought not to have interfered with the punishment imposed without considering the findings of the Labour Court 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, more particularly when the correctness of the charges brought against the workman have not been assailed by the workman.

26. The Co-ordinate Bench of this Court in the case of Venkat as well as Rupasingh R. Chavan *supra*, held that the order of dismissal of the workman contravening Section 33 of the Act would render the dismissal order inoperative considering and distinguishing the judgment of the Honâ??ble Apex Court in the case of Rajasthan SRTC as well as Shivasharanappa *supra*.

27. In the present case, the workman had challenged the award of the Tribunal declaring the order of dismissal from the services of the workman and

directing the management to reinstate the workman into service with continuity of service and consequential benefits, subject to imposing punishment

of withholding four annual increments with cumulative effect and by denying the backwages, but no complaint under Section 33-A was filed.

28. Learned Single Judge, considering the findings of the Labour Court in the light of the judgments referred to supra, qua the charges leveled against

the workman, allowed the writ petition filed by the workman in part, modifying the award of the Labour Court dated 25.11.2010, directing

reinstatement of the conductor-workman with 25% backwages. Hence, the reliance placed by the learned Single Judge on the Division Bench

decision of this Court in the case of Venkat supra, cannot be said to be unjustifiable.

29. For the reasons discussed above, we are of the considered view that filing of complaint under Section 33A of the Act is at the option of the

workman. No such complaint being filed under Section 33A of the Act and adjudicated by the Labour Court resulting in a finding, prior approval in the

pending disputes before the Industrial Tribunal is mandatory under Section 33(2) (b) of the Act for passing an order of dismissal of the workman by the

Corporation and for want of the same, dismissal order deserves to be set aside.

No grounds made out by the appellant to interfere with the well reasoned order of the learned Single Judge.

Accordingly, the appeals stand dismissed.

In view of the above, I.A.2/2016 does not survive for consideration and stands dismissed.