

(1987) 09 CAL CK 0006

In the Calcutta High Court

Case No : F.M.A. No. 536 of 1981, F.M.A.T. No. 829 of 1985 F.M.A.T. No. 1876 of 1985 and F.M.A.T. No. 530 of 1985.

Legan Jute Machinery Co. Ltd.

APPELLANT

Vs

Eighth Industrial Tribunal
 Asbestos Cement Ltd. Vs
Seventh Industrial Tribunal
 The General Electric
Company of India Ltd. Vs Fifth Industrial Tribunal

Machinery Manufacturers Corpn. Ltd. Vs Third Industrial
Tribunal

RESPONDENT

Date of Decision : 17-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Constitution of India, 1950 — Article 136

Industrial Disputes Act, 1947 — Section 10, 2(k), 33, 33(2)(4), 33(2)(b)

Citation : 92 CWN 464

Hon'ble Judges : Mookerjee, C.J.;Bhagabati Prosad Banerjee, J.;Ajit Kumar Sengupta, J

Bench : Full Bench

Advocate : P. P. Ginwalla, Mr. A. Chowdhury and Mr. Sanat Kumar Seal in F.M.A No. 536 of 1981, Mr. P. P. Ginwalla, Mr. Pradip Kumar Ghosh, Mr. Prantosh Mukherjee in F.M.A.T. No. 829 of 1985, Mr. R. C. Deb and Mr. Gopal Dutta in F.M.A.T. No. 1876 of 1985, Dr. D. Pal, Mr. N. K. Mehta and Mr. P. K. Bhowmick in F.M.A.T. No. 530 of 1985, S. N. Dutta not present in F.M.A. No. 536 of 1981, Mr. S. R. Ghosh in F.M.A.T. Nos, 829, 1876 and 530 of 1985, for the Appellant;Saiful Alam (not present) in F.M.A. No. 536 of 1981, Mr. K. Roy and Mr. Sk. H. Quodir in F.M.A.T. No. 829 of 1985, Mr. P. S. Sengupta, Arunava Ghosh and Mr. Subrata Chatterjee in F.M.A.T. 1876 of 1985, Mr. Sunit Dutta and Miss Chhabi Chakraborty in F.M.A.T. No. 530 No. 1985, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Kumar Sengupta, J.—These four matters are heard together as they raise common question of law for determination by the Special Bench.

2. At the outset it is necessary to state briefly the circumstances under which the

matters have come before the Special Bench. The General Electric Company of India Ltd., the appellant in F.M.A. T No. 1876 of 1985 moved a Writ Application on 24th August, 1984 challenging, inter alia, the order dated 4th July, 1987 passed by the Fifth Industrial Tribunal. By the said order the Tribunal held that in the proceeding u/s 33(2) (b) of the Industrial Dispute Act, 1947 (hereinafter referred to as the said Act), the earlier Tribunal did not decide finally the legality and propriety of the enquiry but came to a merely prima facie the finding in this regard. The said application was dismissed by U. C. Banerjee, J. by his Judgment and order, dated 22nd May, 1985. An appeal was preferred by the General Electric Company of India Ltd. against the said judgment and order. On 2nd September, 1985 the Division Bench presided over by Chittatosh Mookerjee, C.J. (as his Lordship then was) referred the said appeal to a larger Bench consisting of three learned Judges having regard to the fact that a similar reference had already been made by a Division Bench presided over by Anil K. Sen, J. (as his Lordship then was) in F.M.A.T. No. 2087 of 1985 Machinery Manufacturers Corporation Ltd. v. Third Industrial Tribunal, West Bengal and Ors.

3. In the case of Machinery Manufacturers Corporation Ltd. similar question as regards the power and scope of the Tribunal u/s 33(2) (b) of the said Act came up for consideration before U. C. Banerjee, J. who dismissed the Writ Application of the employer and the said appeal was allowed by The Division Bench and the Rule was restored to the file for hearing by a larger Bench consisting of three learned Judges.

4. One other appeal being the appeal of Lagan Jute Machinery Company Ltd. v. Eighth Industrial Tribunal arises out of the order of M. N. Roy, J. passed on 22nd August, 1980 in C.O. No. 8865 (W) of 1980 who rejected the Writ Application of the employer holding that there is no restriction on the power of the Tribunal dealing with the matter u/s 10 of the said Act although a determination was made u/s 33(2) (b) of the said Act. The said appeal being F.M.A.H. No. 536 of 1981 is also heard by this Special Bench.

5. The other matter arises out of the order, dated 4th March, 1985 passed in C.O. No. 8691(W) of 1983 (Asbestos Cement Ltd. v. Seventh Industrial Tribunal, West Bengal & Ors.) where S. C. Sen, J. held similar view. Asbestos Cement Ltd. preferred an appeal against the said order being F.M.A.T. No. 829 of 1985 which is also heard by this Bench.

6. Although in the reference made by the Bench presided over by S. K. Sen, J. (as his Lordship then was) the Division Bench did not formulate any specific question but in fact the Division Bench referred the point of law in the following manner:

The point is as to whether the finding of a Tribunal adjudicating an application u/s 33(2) (b) of the I.D. Act that the domestic enquiry had been fairly made for granting approval to an order of dismissal, would be conclusive between the parties for any subsequent adjudication on a reference of a dispute raised with

regard to such dismissal or not. Though a Division Bench has held that such a finding is prima facie and not conclusive, we are satisfied that the point may require reconsideration in view of the authorities now cited.

7. The question that calls for determination by this Bench is whether the finding in a proceeding u/s 33 (2) (b) of the Industrial Disputes Act, 1947 to the effect that the domestic enquiry held by the employer was fair and proper, would operate as res judicata in a proceeding pursuant to a reference made u/s 10 of the said Act.

8. It has been contended by Mr. R. C. Deb and Mr. P. P. Ginwala learned Counsels appearing for the appellants that whether the finding of the Tribunal in a proceeding u/s 33(2) (b) would be res judicata or not in a subsequent proceeding u/s 10 of the Act would depend on the nature of the enquiry made by the Tribunal while exercising the power u/s 33 (2) (b) of the Act. It is the contention of the learned Counsel that according approval of the application of the employer for dismissal of a workman during the pendency of the proceeding before the Tribunal, the Tribunal firstly has to come to a finding whether the domestic enquiry held by the employer was fair and proper and secondly whether the workman was prima facie guilty of misconduct. It is, therefore contended that unless the Tribunal comes to a finding that the domestic enquiry was held fairly and properly, it cannot accord any approval to the application for permission for dismissal of a workman. In other words, the contention is that there cannot be any prima facie finding as to the validity of the domestic enquiry. It must be conclusive finding, Otherwise the Tribunal cannot accord any approval to the application of the employer for dismissal of a workman. The finding as to the misconduct of the workman which is a prima facie finding of the Tribunal may be the subject matter of an industrial dispute in a subsequent proceeding u/s 10 of the Act.

9. On the other hand the contention of Mr. Sengupta, learned Counsel for the workman is that the finding of the Tribunal in a proceeding u/s 33(2)(b) can never be conclusive as the Tribunal does not adjudicate on any issue at that stage. It is only a prima facie finding and therefore, when a reference is made u/s 10 challenging the legality and justification of, the order of dismissal, the Tribunal has to go into the question whether the domestic enquiry was fair and proper. It is the contention of the learned Counsel that unless there is an adjudication on the issue, the finding cannot be res judicata and the very nature of the power conferred on the Tribunal u/s 33(2) (b) of the said Act would show that there cannot be adjudication as to the validity of the domestic enquiry. Accordingly the finding of the Tribunal in such a proceeding can never be res judicata.

10. To appreciate the respective contentions, it is necessary to consider the scope and ambit of the jurisdiction of the authorities under the Industrial Disputes Act while discharging the function in a proceeding u/s 33(2) (b) of the Act. It would be relevant at this stage to refer to the decision of the Division

Bench of this Court which according to the Division Bench presided over by Anil Kumar Sen, J. (as his lordship then was) required reconsideration by the larger Bench. The said decision. ii in the case of Graphite India Ltd v. State of West Bengal & Ors. reported in 1979 L.T.C. 1279. In Graphite India's case (Supra) the contention of the appellant company was that in the proceeding u/s 33(2) (b) of the Industrial Disputes Act, the Tribunal having found that there had been no violation of the principles of natural justice, it was not open to the Tribunal to bold to the contrary in the proceeding u/s 10 of the Act. In other words, it was urged that the finding of the Tribunal in the proceeding u/s 33 (2) (b) of the Act that a proper and legal enquiry was held against the workman as required under the law would operate as res judicata in a subsequent proceeding u/s 10 The Division Bench presided over by M. M. Dutta, J, (as his Lordship then was) observed as follows:

It is now a well established principle of law that the finding on an issue in order to be res judicata in a subsequent proceeding, the issue must have been heard and finally decided. In a proceeding u/s 33(2) (b), the Tribunal may approve of the action of the employer against his employee on a prima facie finding that the enquiry held against the employee was proper and legal and that all the principles of natural justice were complied with. The Tribunal is, therefore, not to decide finally as to the legality and propriety of the enquiry but comes to a prima facie finding in that regard. As the point cannot be said to have been finally decided by the Tribunal there is no question of the finding of the Tribunal operating as res judicata in a subsequent proceeding.

The principles of res judicata oust the jurisdiction of the Court or Tribunal to entertain any suit or proceeding. If an issue operates as res judicata it cannot be raised again in a subsequent suit or proceeding. It, therefore, follows that when the raising of a dispute is permitted and the Tribunal is entitled to entertain the same, there could be no question of res judicata preventing the Tribunal from determining that dispute.

11. The learned Counsel for the appellants urged that the Division Bench decision in the case of Graphite India Ltd. v. State of West Bengal (Supra) did not correctly lay down the law as it did not consider the judgment of the Supreme Court in the case of Bengal Bhadee Coal v. Ram Probesh Singh & Ors. reported in AIR 1964 S.C. 486. The contention is that the Division Bench fell into an error in holding that the finding that the domestic enquiry was fair in a proceeding u/s 33 (2) (b) of the Act is a prima facie one and no finality could be attached to it. In other words, the correctness of the Bench decision calls for determination in this case.

12. The principle of res judicata is that a final judgment rendered by a Court of Competent jurisdiction on the merits is conclusive as to the rights of parties. It constitutes an absolute bar to a subsequent action involving the same demand, claim or cause of action. It is a fundamental doctrine of all Courts that there must be end of litigation.

13. One of the essential conditions of res judicata is that the matter directly and substantially in issue in a subsequent proceeding must have been heard and finally decided in a former proceeding. Although the rule of res judicata enacted in Section 11 of the CPC in terms does not apply to the Industrial Tribunal but it is now well settled that the principle underlying it is applicable to their decision. It is, therefore, necessary that in a proceeding u/s 33(2) (b) Tribunal must have finally decided the issue as to whether the domestic enquiry held was fair and proper. Even if res judicata does not apply, the party may be precluded from contending the contrary of any precise point, which was distinctly put in issue and was found against him. The conclusiveness of the determination is the essential condition of res judicata.

14. In this context we may proceed to consider the scope and ambit of Section 33(2)(b). Section 33(2) (b) provides that during the pendency of the Conciliation proceeding before the Conciliation Officer, or Board or any proceeding before any arbitrator or Labour Court, Tribunal or National Tribunal in respect of an industrial dispute, the employer may, for any misconduct not connected with industrial dispute, discharge or punish a workman whether by dismissal or otherwise, provided that the workman has been paid wages for one month and an application has been made by the employer to the authority before whom such proceeding is pending for approval of the action taken by the employer.

15. It is, therefore, necessary to consider what are the limits if any, to the discretionary power of the Tribunal when entertaining a petition u/s 33(2)(b). There are certain pre-requisites to be satisfied before permission or approval is accorded to the employer for discharge or dismissal of any workman during the pendency of the proceeding before the concerned authority. In according or withholding approval to the dismissal or discharge of a workman on the application of the employer, the Tribunal has to consider firstly, whether a proper domestic enquiry in accordance with the relevant rules/standing orders and the principles of natural justice has been held; secondly, whether there is legal evidence to sustain the misconduct warranting the dismissal of the workman and thirdly whether the dismissal of the workman amounts to unfair labour practice and is intended to victimise the workman. Upon such consideration the Tribunal either accords or withholds the approval to the dismissal or discharge of the workman concerned.

16. The ambit of the Tribunal's jurisdiction u/s 33 of the Act was considered for the first time by the Supreme Court in the case of Atherton West and Co. Ltd. Vs. Suti Mill Mazdoor Union and Others, In that case a theft in the canteen of the company has led to the dismissal of the Canteen Manager, which became a subject of industrial dispute referred for adjudication under the U.P. Industrial Dispute Act, 1947. Three other workmen were implicated and permission to dismiss them was accorded by the Additional Conciliation Officer under Clause 23 of the U.P. Industrial Dispute Act 1947. It may be mentioned that Clause 23 is a part of the Government Notification, dated 10th March, 1948 issued by the U.P.

Government in exercise of the powers conferred under Sections 3 & 8 of the U.P. Industrial Dispute Act, 1947. Subsequently, the dispute regarding the dismissal of those workmen was referred to a Labour Court for adjudication which resulted in an award of reinstatement. On appeal the award of the Labour Court was sustained by the Labour Appellate Tribunal. Against the order of the Appellate Tribunal, the employer filed an appeal under Article 136 of the Constitution in which it was contended that the order made by the Assistant Regional Conciliation Officer giving the company a written permission to dismiss the three workmen was final and conclusive and their dismissal could not be the foundation of any industrial dispute which could be referred to the Regional Conciliation Board at the instance of the Union. This contention was negated by the Supreme Court. The Supreme Court observed thus:

It is clear that Cl. 23 imposed a ban on the discharge or dismissal of any workman pending the enquiry of an industrial dispute before the board or an appeal before the industrial court and the employer, his agent or manager could only discharge or dismiss the workman with the written permission of the regional conciliation officer or the assistant regional conciliation officer concerned. Even if such written permission was forthcoming the employer, his agent or manager might or might not discharge or dismiss the workman and the only effect of such written permission would be to remove the ban against the discharge or dismissal of the workman during the pendency of those proceedings. The regional conciliation officer concerned would institute an enquiry and come to the conclusion whether there was a prima facie case made out for the discharge or dismissal of the workman and the employer, his agent or manager was not actuated by any improper motives or did not resort to any unfair practice or victimisation in the manner of the proposed discharge or dismissal of the workman. But he was not entrusted, as the board or the industrial court would be, with the duty of coming to conclusion whether the discharge or dismissal of the workman during the pendency of the proceedings was within the rights of the employer, his agent or manager. The enquiry to be conducted by the regional conciliation officer concerned was not an enquiry into an industrial dispute as to the non-employment of the workman who was sought to be discharged or dismissed, which industrial dispute would only arise after an employer, his agent or manager discharged or dismissed the workman in accordance with the written permission obtained from the officer concerned. This was the only scope of the enquiry before the regional conciliation officer or the assistant regional conciliation officer concerned and the effect of the written permission was not to validate the discharge or the dismissal but merely to remove the ban on the powers of the employer, his agent or manager to discharge or dismiss the workman during the pendency of the proceedings. Once such written permission was granted by him, that order made or direction issued by him was to be final and conclusive and was not to be questioned by any party thereto in any proceedings. The only effect of Cl. 24(1) was to prevent any party to the pending proceeding, from challenging the written permission thus granted

by the officer concerned. Such written permission could not be made the subject matter of any appeal at the instance of either party and both the parties would be bound by the order made or direction issued by the officer concerned so far as it gave or refused the permission to the employer, his agent or manager in the matter of the proposed discharge or dismissal of the workman.

This was the only scope of the provisions of Cls. 23 and 24(1) above mentioned. Once the written permission was granted by the officer concerned, the ban against the discharge or dismissal of the workman would be removed and the employer, his agent or manager could in the exercise of his discretion, discharge or dismiss the workman but in that event an industrial dispute within the meaning of its definition contained in Sec. 2(k), Industrial Disputes Act, 1947, would arise and the workman who had been discharged or dismissed would be entitled to have that industrial dispute referred to the regional conciliation board for enquiry into the same. That right of the workman to raise an industrial dispute could not be taken away in the manner suggested by Sri C. K. Daphtary by having resort to the provisions of Cls. 23 and 24(1) aforesaid. That right was given to the workman by the terms of the Industrial Disputes Act, 1947, and the U.P. Industrial Disputes Act 1947 and would remain unaffected by any of the provisions herein before referred to.

(Emphasis supplied).

17. The Supreme Court in that case laid down a two-fold test in dealing with the application for approval of the action taken by the employer for discharge or dismissal of the workman. Firstly, the employer must have made out a case for the proposed action and secondly, was acting bona fide.

18. At this stage it may be mentioned that the Supreme Court in the case of *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, observed that the Cl. 23 of the notification under the U.P. Industrial Dispute Act, 1947, which fell for consideration before the Supreme Court in *Atherton West (Supra)* is in pari materia with Sec. 33 of the Industrial Disputes Act, 1947. There the Supreme Court held as follows:

It has been held by this Court in *Atherton West and Co. Ltd. Vs. Suti Mill Mazdoor Union and Others*, which was case under Cl. 23 of the Uttar Pradesh Government notification quoted. Section 22 of the 1950 Act is in pari materia with S. 33 of the 1947 Act and the above Cl. 23 of the Uttar Pradesh Government notification and most of the considerations noted above in connection with these provisions apply mutatis mutandis to S. 22 of the 1950 Act.

19. In Section 33 of the Act there are two types of authorities - conciliatory authority that is to say, conciliation officer or the board and the adjudicating authority, that is to say, arbitrator, labour court, industrial tribunal or national tribunal. All these authorities have the same power in considering, whether the ban imposed by Section 33(2) (b) would be lifted or not. The Labour Court Industrial Tribunal or. National Tribunal are empowered to decide or adjudicate

upon industrial disputes, but the conciliation officer or the Board has no jurisdiction or power to adjudicate. They are normally charged with the duty of bringing about the settlement of disputes. But the Act has given similar discretionary power to all these authorities whether conciliatory or adjudicating either to withhold or accord permission for the dismissal of workman during the pendency of the proceeding before such authorities. The content of the power and extent of jurisdiction of these authorities u/s 33 (2) (b) are same. It cannot, therefore, be contended that the finding of a conciliation officer in lifting the ban will not be res judicata in a subsequent proceeding u/s 10, whereas the decision of Labour Court, Industrial Tribunal or National Tribunal in a similar case giving approval to the discharge or dismissal of a workman would be res judicata in a subsequent proceeding.

20. The Supreme Court in the case of *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, considered the scope of Section 33 of the Industrial Disputes Act, 1950. The Supreme Court held:

The object of S. 22 of the 1950 Act like that of S. 33 of the 1949 Act as amended is to protect the workman concerned in disputes which form the subject matter of pending proceeding against victimization by the employer on account, of their having raised industrial disputes of their continuing the pending proceedings. It is further the object of the two Sections is to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should, during the pendency of those proceedings, take any action of the kind mentioned in the Sections which may give rise to fresh disputes likely to further exacerbate the already strained relations between the employer and the workmen. To achieve this object a ban has been imposed upon the ordinary right which the employer has under the ordinary law governing a contract of employment. Section 22 of the 1950 Act and S. 33 of the 1947 Act which impose the ban also provide for the removal of that ban by the granting of express permission in writing in appropriate cases by the authority mentioned therein. The purpose of these two Sections being to determine whether the ban should be removed or not, all that is required of the authority exercising jurisdiction under these Sections is to accord or withhold permission. And so it has been held - we think rightly - by the Labour Appellate Tribunal in *Carlsbad Mineral Works Company Ltd. v. Their workmen*, (1953 I LLJ 85) which was a case under S. 33 of the 1947 Act. Even a cursory perusal of S. 33 of the 1947 Act will make it clear that the purpose of that Section was not to confer any general power of adjudication of disputes. It will be noticed that under S. 33 of the 1947 Act the authority invested with the power of granting or withholding permission is the conciliation officer, board or tribunal. The conciliation officer or the board normally has no power, under the 1947 Act, to decide any industrial dispute but is only charged with the duty of bringing about a settlement of dispute. It is only the tribunal which can by its award decide a dispute referred to it. Section 33 by the same language confers jurisdiction and power on all the three authorities. Power being thus conferred by

one and the same section, it cannot mean one thing in relation to the conciliation officer or the board and a different and larger thing in relation to the tribunal. There is no reason to think that the legislature, by a side wind as it were, vested in the conciliation officer and the board the jurisdiction and power of adjudicating upon disputes which they normally do not possess and which they may not be competent or qualified to exercise. Further, if the purpose of the section was to invest all the authorities named therein with power to decide industrial disputes one would have expected some provision enabling them to make and submit an award to which the provisions of the Act would apply such as is provided in S. 33A of the 1947 Act or S. 23 of the 1950 Act. There is no machinery provided in S. 33 of the 1947 or S. 23 of the 1950 Act for enforcing the decision of the authority named in those sections. This also indicates that those sections only impose a ban on the right of the employer and the only thing that the authority is called upon to do is to grant or withhold the permission, i.e., to lift or maintain the ban. And so it has been held by this Court in *Atherton West and Co. Ltd. Vs. Suti Mill Mazdoor Union and Others*, .

(Emphasis supplied)

21. Reference may also be made to a decision of the Supreme Court in the case of *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*, . It has been held by the Supreme Court that the Tribunal before whom an application is made u/s 33 has not to adjudicate upon any industrial dispute arising between the employer and the workmen, but has only got to consider whether the ban which is imposed on the employer during the pendency of the proceedings therein referred to should be lifted. The Supreme Court held thus:

A prima facie case has to be made out by the employer for the lifting such ban and the only jurisdiction which the tribunal has is either to give such permission or to refuse it, provided the employer is not acting mala fide or is not resorting to any unfair practice or victimisation..... If the permission is granted, the ban would be lifted and the employer would be at liberty if he so chooses thereafter to deal out the punishment to the workmen. On such action being taken by the employer the workman would be entitled to raise an industrial dispute which would have to be referred to the appropriate tribunal for adjudication by the Government on proper steps being taken in that behalf. When such industrial dispute comes to be adjudicated upon by the appropriate tribunal, the workmen would be entitled to have all the circumstances of the case scrutinized by the tribunal and would be entitled to get the appropriate relief at the hands of the tribunal..... The Tribunal before whom such an application for permission is made u/s 22 of the Act would not be entitled to sit in judgment on the action of the employer if once it came to the conclusion that a prima facie case had been made out for dealing out the punishment to the workmen. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent, that it might bear on the question whether the action, of .the

management was bona fide or was actuated by the motive of victimization. If on the materials before it the tribunal came to the conclusion that a fair enquiry was held by the management in the circumstances of the case and it had bona fide come to the conclusion that the workman was guilty of misconduct with which he had been charged, a prima facie case would be made out by the employer and the tribunal would under these circumstances be bound to give the requisite permission to the employer to deal out the punishment to the workmen..... the only function of the tribunal u/s 22 of the Act would be to either grant the permission or to refuse.

The Supreme Court further held:

In the circumstances of the present case the appellant succeeded in establishing that the workmen had resorted to an illegal strike from 7 A.M. on 27th May, 1952, that a fair enquiry into the alleged misconduct and insubordination of the workmen had been held by the management without violating any principles of natural justice, that the management had as a result of such enquiry found that workmen had been guilty of misconduct and insubordination with which they had been charged and that the management had come to the bona fide conclusion, that continuing the workmen in its employ was detrimental to discipline and dangerous in the interest of the appellant, the Labour Appellant Tribunal ought to have held that a prima facie case for dismissal of the workmen had been made out by the appellant and ought to have been granted the applicant the permission to dismiss the workmen

(Emphasis supplied).

22. The Supreme Court in the case of *The Lord Krishna Textile Mills Vs. Its Workmen*, , held:

In view of the limited nature and extent of the enquiry per-missible u/s 33(2) (b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employee has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed S. 33(2) (b) and the proviso are satisfied or not

(Emphasis supplied).

23. It, therefore, appears that Section 33 of the Act imposes ban on the discharge or dismissal of any workman during the pendency of a proceeding before the concerned authority and the employer would be at liberty to discharge or dismiss only after obtaining written permission of the Conciliation officer or the Board or the Labour Court or Industrial Tribunal or the National Tribunal as the case may be. The only power or jurisdiction of these authorities is to remove the ban against the discharge or dismissal of the workmen during the pendency of the proceedings before permission of any such authorities. It would be amply

clear from the decisions of the Supreme Court referred to above that the authority in giving permission or refusing permission for discharge or dismissal of the workmen comes to a conclusion whether a prima facie case has been made out by the employer for the discharge or dismissal of the workman and whether the employer was actuated by any improper motive, In other words the concerned authority has to come to a prima facie conclusion as to whether in dismissing or discharging of the workman the employer adopted any unfair practice or victimization. Once a written permission is granted by the concerned authority, the ban against the discharge or dismissal of the workman would be removed and the employer in their discretion may dismiss or discharge the workman. Thus the enquiry made by the authority in exercising the power and jurisdiction u/s 33(2) (b) is only a prima facie enquiry. It does not decide or adjudicate any dispute or any issue finally or conclusively.

24. The expression, "Prima facie" means at the first sight or on the first appearance or on the face of it, or so far as it can be judged from the first disclosure. Prima facie case means that the evidence brought on record would reasonably allow the conclusion that the Plaintiff seeks. The prima facie case would mean that a case which has proceeded upon sufficient proof to that stage where it would support finding if evidence to contrary is disregarded. See Black's Law Dictionary, 5th ed.

25. The decisions of the Supreme Court emphasized a prima facie case in contradistinction to adjudication. The Supreme Court in *Martin Burn Ltd. Vs. R.N. Banerjee*, held that:

A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and as to whether that was only conclusion which could be arrived at on that evidence.

26. The contention of the Learned Counsel for the appellants is that the Tribunal in a proceeding u/s 33(2) (b) has to arrive at findings primarily on two issues firstly, whether the domestic enquiry held was proper and fair and secondly, whether the workman is guilty of misconduct. According to the learned Counsel, the finding that the domestic enquiry held was proper and fair is conclusive and this cannot be reagitated in a proceeding u/s 10 of the Act where the issue is whether the dismissal of the workman is valid or not. So far as the second enquiry as regards the misconduct of the workman warranting his dismissal or discharge, the contention is that the concerned authority at the stage of according approval only comes to a prima facie finding and accordingly this issue can be urged before the appropriate authority when the reference is made u/s 10 of the Act questioning the validity of the order of dismissal or discharge of the workman concerned. In other words, what the learned Counsel wants us to hold is that although the ultimate conclusion of the Tribunal or the appropriate

authority exercising power or jurisdiction u/s 33(2) (4) is prima facie one, but one of the primary findings is conclusive at that stage. We are, however, unable to accept this contention. If the ultimate conclusion of the authority exercising the power under Sanction 33(2) (4) is a prima facie one, then in arriving such a prima facie conclusion a finding made upon on any issue either as regards fairness and propriety of the domestic enquiry or with regard to the misconduct of the workman cannot be conclusive. This issue before the authority in according or withholding permission is only one, that is, whether a prima facie case has been made out by the employer for the dismissal or discharge of any workman during, the pendency of the proceeding before such authority, leaving the industrial dispute to be decided on merits in the appropriate proceeding if such dismissal or discharge is challenged. If the ultimate determination of the Tribunal is not conclusive in that event one of. the processes or enquiries through which such determination is made can never be conclusive. There cannot be prima facie finding in respect of one enquiry and conclusive finding in respect of the other, where the sum total of these enquiries and findings is a prima facie determination whether the ban on dismissal or discharge of the workman should be lifted or not. Relying on the decision of the Supreme Court in the easy of Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others, , it was contended that there is no difference in principle of law applicable to a case u/s 10 and that u/s 33. It may be that after Atherton West (Supra), scope of enquiry u/s 33 has been enlarged, but the ultimate findings in a proceeding u/s 10 and that u/s 33 are different as the jurisdiction and power are also different. In a proceeding u/s 33(2) (4) the authority has a limited jurisdiction. The nature and extent of the enquiry permissible are limited. Its decision is also limited in scope and effect. But in a case u/s 10 the finding on every issue becomes conclusive as the Tribunal or Labour Court adjudicates the issue raised before such authority. We are unable to accept the contention that the stages of enquiry in a proceeding u/ s 33(2) (b) are to be split up and the finding at one stages may be looked into and considered in isolation. The concerned authority has to consider three aspects; firstly whether the domestic enquiry held was fair and proper, if so, whether there is any evidence of misconduct and whether there is any victimization or unfair labour practice in dismissing a workman. It is an integrated process and the conclusion that the ban, should be lifted or not, is based on the primary facts ascertained on the several stages of the enquiry.

27. But in considering the question of res judicata the determinative factor is whether the authority u/s 33(2) (b) adjudicates any issue or not. Thus if the distinction between the prima facie case and adjudication is maintained, an order u/s 33(2) (b) would not operate as res judicata in a reference u/s 10 of the Act.

28. This question as regard the power of adjudication of the Tribunal u/s 33 and principle of res judicata came up for consideration of the Supreme Court in the case of McKenzie and Co. Ltd. Vs. Its Workmen and Others, . In that case a reference was made u/s 10 of the Act to the Second Industrial Tribunal. During the pendency of the said reference the workman acted in a manner subversive of

discipline, wilful insubordination and disobedience. An enquiry was held and the workmen were found guilty of gross misconduct amounting to major misdemeanor which merited dismissal and the company proposed to dismiss them. The company made an application to the Tribunal for permission u/s 33 of the Act to dismiss 170 workmen. Ultimately the proceedings were continued against 64 workmen only. The Tribunal held that a prima facie case was made out for granting permission for dismissal of workmen directly involved in the incident and the employer had acted bona fide and that it was not guilty of discrimination, vindictiveness or arbitrary action. The Tribunal gave permission for dismissal of only three workmen and with regard to the rest the permission was refused. The workmen made application u/s 33A of the Act which was allowed. Three appeals were filed by the company against the orders under Sections 33 and 33A of the Act. All these appeals were dismissed. The management took fresh proceeding against 64 workmen. There was no proceeding pending at the time when the enquiry terminated. The company terminated the services of all 64 workmen. The termination of services of these workmen gave rise to industrial dispute and a reference was made by the West Bengal Government in regard to all the 64 workmen. One of the issues was whether the dismissal of the 64 workmen was justified. A contention was raised that no second enquiry could be held because the earlier finding of the Tribunal on the application u/s 33 of the Act would not be challengable on the principle of res judicata. There the Supreme Court held as follows:

As to the applicability of the principle of res judicata the argument raised by counsel for respondents was that the findings of the State Industrial Tribunal in proceedings u/s 33 of the Act which were confirmed by the Labour Appellate Tribunal barred right of the management of the appellant company to start a fresh enquiry in respect of the same incident which formed the subject matter of the previous enquiry. There is no force in this contention, which seems to be based on a misapprehension as to nature and scope of proceedings u/s 33. That section does not confer any jurisdiction on a tribunal to adjudicate on a dispute but merely empowers the tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute. And in deciding whether permission should or should not be given, the industrial tribunal is not to act as a reviewing tribunal against the decision of the management but to see that before it lifts the ban against the discharge or punishment of the workmen, the employer makes out a prima facie case. The object of the section is to protect the workmen in pending industrial disputes against intimidation or victimisation. As said above, principles governing the giving of permission in such cases are that the employer is not acting mala fide, is not resorting to any unfair labour practice, intimidation or victimization and there is no basic error or contravention of the principles of natural justice. Therefore, when the Tribunal gives or refuses permission, it is not adjudicating an industrial dispute; its function is to prevent victimization of a workman for having raised an industrial dispute. The nature and scope of

proceedings u/s 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does not bar the raising of an industrial dispute when as a result of the permission of the industrial tribunal the employer dismiss or punishes the workmen: *Atherton West and Co. Ltd. Vs. Suti Mill Mazdoor Union and Others*, , (*Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup*,).

29. In the *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, Das, J, (as he then was) said at p. 353:

The purpose of these two Sections (Sec. 33 of the Industrial Disputes Act) and S. 22 of the Industrial Disputes (Appellate Tribunal) Act being to determine whether the ban should be removed or not; all that is required of the authority exercising jurisdiction under these two sections is to accord or withhold permission". As the purpose of Section 83 is merely to give or withhold permission and not to adjudicate upon an industrial dispute, any finding u/s 33, would not operate as *res judicata* and bar the raising of an industrial dispute nor is there anything in the section itself or in the findings arrived at by the industrial tribunal in Section 33 proceedings, dated 6 June, 1954, or of the Labour Appellate Tribunal, dated 29 March, 1955, which would debar the appellant company from holding the second enquiry or dismissing the workmen provided the principles above set out are complied with

(Emphasis supplied)."

30. It may be mentioned that in *Lakshmi Devi Sugar Mill (Supra)* Supreme Court held that the Tribunal in a proceeding u/s 33 has not adjudicate any industrial dispute but only to consider whether any *prima facie* case has been. made out,. The principles laid down in *Lakshmi Devi Sugar Mill (Supra)* and *G. McKenzie & Co. (Supra)* have not been departed from in the subsequent decisions of the Supreme Court. It may be that the scope of the enquiry to be made u/s 38(2) (b) has been enlarged by the subsequent decisions of the Supreme Court, but it has been consistently held that when the Tribunal gives or refuses the permission u/s 33(2) (b), it is not adjudicating any industrial dispute, Its function is to prevent victimisation of the workmen for having raised any industrial dispute. The finding of the Tribunal and for that matter any of the authorities exercising power u/s 33(2) (b) at that stage is only *prima facie* and there is no adjudication of any issue as such. Therefore, the finding u/s 33(2) (b) would not operate *res judicata* and bar the raising of an industrial dispute. It may be mentioned that the decision of the Supreme Court in the case of *G. McKenzie & Co. (Supra)* has not been overruled by any subsequent decision of the Supreme Court and the High Courts have consistently taken the view following the aforesaid decision of the Supreme Court in *G. McKenzie & Co. (Supra)* that a finding u/s 38 would not operate as *res judicata* in a proceeding u/s 10. It is no doubt true that in performing the duty u/s 33(2) (b), the authority has to see whether there has been any proper enquiry and whether the management has been actuated by any improper motive but such conclusion has to be arrived at by the authorities not after any detailed enquiry but on *prima facie* consideration of the materials

brought on record. In a proceeding u/s 10, the Tribunal will have to go into the question whether domestic enquiry which resulted in the dismissal of the workmen was a proper one or not. The object of the Section 33 is to provide for the continuance and termination of the pending proceeding in a peaceful atmosphere. It envisages the maintenance of status quo pending disposal of the industrial dispute between the parties but at the same time it allows the employer to take certain disciplinary action subject to the conditions laid down in the said section. Section 33 in the first instance imposes a ban on the management from altering the status quo as regards the relationship between the management and the workers who are concerned in the pending proceeding. Then it provides lifting of the ban by the grant of permission or approval by the authorities specified in Section 33(2) (b). It is the duty of the authorities in granting permission to see whether domestic enquiry which had been conducted by the management against the workman is without any apparent defect and the punishment proposed is prima facie just and proper. But in a proceeding u/s 10, the Tribunal has to go into the merits of the case on evidence and find out whether the domestic enquiry suffers from any defect and whether the punishment is just and proportionate and commensurate with the offence charged.

31. Thus the scope of an enquiry u/s 33(2) (b) is very limited. At this stage the authority has to satisfy itself whether there is a prima facie case made out by the management or not, but while deciding a reference u/s 10, the Tribunal has to consider in detail the validity of the domestic enquiry and evidence adduced by it in support of the act of misconduct of the workman. The issues, therefore, in proceeding u/s 33(2) (b) and in proceeding u/s 10 of the Act are not the same. In a proceeding u/s 38(2) (b) the authorities are concerned with the prima facie aspect of the matter and do not make any close scrutiny of the departmental enquiry. It does not contemplate any elaborate enquiry at all. But in the proceeding u/s 10 the Tribunal has to decide the issue on the evidence and to come to a positive finding as to the fairness, propriety, legality and the validity of the domestic enquiry as well as misconduct of the concerned workmen. At the stage of granting permission u/s 33 the authority cannot constitute itself into an adjudicating authority over the decision of the management. The reason why the authority is confined to the prima facie aspect of the matter and not to subject the enquiry close scrutiny to find out the infirmities if any in the domestic enquiry is that the workmen is not left without any remedy even when the approval is given to an action proposed for dismissal of a workmen. The remedy of raising of industrial dispute and consequent reference is always open to the workmen, and in that proceeding after reference is made, it has to be found as a matter of fact whether the enquiry was properly held and whether there has been victimisation and whether the particular act complained of merits punishment of dismissal or discharge or not.

32. Thus an enquiry which is meant for the purpose of the lifting the ban upon the employer's right, cannot but be a prima facie enquiry. Thus the scope and

purpose of the enquiry before the authority u/s 33(2) (b) and the authority u/s 10 are altogether different. It cannot, therefore, be said that the matter directly and substantially in issue in the proceeding u/s 10 was heard and finally decided in a former proceeding u/s 33(2) (b). Therefore, the question of res judicata could not arise. We approve the view taken by the Division Bench of this Court in Graphite India Ltd. (Supra). The view we have taken is also supported by the decisions of the several High Courts, e.g.

(1) East Asiatic Co. Ltd. v Their Workmen & Ors. reported in 1964 (II) LLJ 626 (Madras), Amalgamated Electric Co. Ltd. v. Their Workmen reported in 1975 LIC (Karnataka), K. Mamulu v. Industrial Tribunal, Andhra Pradesh reported in 1977 LIC 1949 (AP); Maharashtra State Road Transport Corporation v. Prabhakar Kashinath Parate and anr. reported in 1979 LIC 138 (Bom), and Delhi Transport Corporation New Delhi v. Ram Kumar and anr. reported in 1982 LIC 1878 (Del).

33. The counsel for the appellants have, however, placed heavy reliance on the decision of the Supreme Court in the case of Bengal Bhatdee Coal Co. Ltd. v. Ram Probesh Singh and Ors. reported in AIR 1964 S.C. 486. In that case 13 workmen were dismissed by the appellant company as a result of enquiry into their misconduct after obtaining the permission of the Industrial Tribunal u/s 33(2) (b) of the Act. When the dispute was referred to the Industrial Tribunal u/s 10, the Tribunal set aside the order of dismissal on the ground that it was a case of victimisation and ordered their reinstatement. The Company preferred an appeal by Special Leave. Before the Supreme Court, the case put forward by the workmen was that there was no proper enquiry as the workmen were not given chance to defend themselves. The learned Counsel for the appellants has placed reliance on the following observation of the Supreme Court in that case:

The tribunal apparently held that inquiry was proper, though it has not said so in so many words in its award. It may be added that it could hardly do otherwise, for it had already approved of the action taken on applications made u/s 33(2) (b) of the Act. If the enquiry had not been proper, the tribunal would not have approved of the dismissals.

We have already indicated that the tribunal did not find that there was any basic error or violation of principles of natural justice in the holding of enquiry; nor did it find that the findings of the enquiry officer were perverse or baseless. It could hardly do so in the face of its own approval of the action taken on applications made to it under S. 33(2) (b) of the Act, for if it had found that the enquiry was not proper, it would not have approved of the action taken against the workmen by the appellant when it was approached under S. 33(2) (b).

34. This case no doubt supports the arguments advanced by the counsel for the appellants that the finding of the Tribunal u/s 33(2) (b) as regards the fairness and propriety of the domestic enquiry is conclusive. But observation made by the Supreme Court in that case has to be understood in the context in which the said observations were made. Firstly, the very Tribunal which gave the permission u/s

33(2) (4) dealt with the reference made u/s 10 of the Act. In that context, it was said that the same Tribunal having approved the action taken on application made u/s 33(2) (b), could not come to any other finding in a subsequent proceeding u/s 10. Secondly it does not appear that any contention was urged before the Tribunal that the domestic enquiry held was not fair or proper. Thirdly, no contention was raised in that case whether the finding in the proceeding u/s 33(2) (b) would operate as *res judicata* in a proceeding u/s 10 of the Act. It is well settled that a decision is only an authority for what it actually decides. What is in essence in a decision is its ratio and not other observations found therein, nor what logically follows from the various observations made in it. It has been held by the Supreme Court in *Amar Nath Om Prakash and Others Vs. State of Punjab and Others*, , that observations of the learned Judge must be read in the context in which they appear and that the judgments of the Courts are not to be construed as statutes. "Judges interpret statute, they do not interpret the judgment". It is also equally well settled that when a question is neither raised nor argued it, would not be a binding precedent. Reference may be made in this connection to the decision of the Supreme Court in the case of *Rajput Ruda Meha and Others Vs. State of Gujarat*, .

35. Strong reliance has been placed on a decision of the Supreme Court in the case of *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, . There the Supreme Court held:

In a long line of decision of this Court the ambit of Section 33, Industrial Disputes Act, 1947 is now well established. There is also no difference in principle of the law applicable to a case u/s 10, Industrial Disputes Act and that u/s 33.

To put it clearly, it is this:

"When an application u/s 33 whether for approval or for permission is made to a Tribunal it has initially a limited jurisdiction only to see whether a *prima facie* case is made out in respect of the misconduct charged".

36. This is, however, the position only when in the domestic enquiry preceding the order of dismissal is free from any defect, that is to say, free from the vice of violation of the principles of natural justice. If on the other hand, there is violation of the principles of natural justice, the Tribunal will then give opportunity to the employer to produce evidence, if any, and also to the workman to rebut it if he so chooses. In the latter even the Tribunal will be entitled to arrive at its own conclusion on merits on the evidence produced before it with regard to the proof of misconduct charged, and the Tribunal then, will not be confined merely to consider whether a *prima facie* case is established against the employee. In other words, in such event, the employer's finding in the domestic enquiry will lapse and these will be substituted by the independent conclusions of the Tribunal on merits.

37. There is a two-fold approach to the problem and if lost sight of, it may result

in some confusion. Firstly, in a case where there is no defect in procedure in the course of a domestic enquiry into the charges from is conduct against an employee, the tribunal can interfere with an order of dismissal on one or other of the following conditions:

(1) If there is no legal evidence at all recorded in the domestic enquiry against the concerned employee with reference to the charge or if no reasonable person can arrive at conclusion of guilt on the charge levelled against, the employee on the evidence recorded against him in the domestic enquiry. This is what is known as a perverse finding.

(2) Even if there is some legal evidence in the domestic enquiry but there is no prima facie case of guilt made out against the person charged for the offence even on the basis that the evidence so recorded is reliable. Such a case may overlap to some extent with the second part of the condition No. 1 above. A prima facie case is not, as, in a criminal case, a case proved to the hilt.

(3) It must be made clear in following the above principles one of the other, as may be applicable in a particular case, the Tribunal does not sit as a court of appeal weighing or reappreciating the evidence for itself but only examines the finding of the enquiry officer on the evidence in the domestic enquiry as it is in the order to find out either whether there is a prima facie case or if the findings are perverse.

(4) Secondly, in the same case, i.e., where there is no failure of the principles of natural justice in the course of domestic enquiry, if the Tribunal finds that dismissal of an employee is by way of victimisation or unfair labour practice, it will then have complete jurisdiction to interfere with the order of dismissal passed in the domestic enquiry. In that event the fact that there is no violation of the principles of natural justice in the course of the domestic enquiry will absolutely lose its importance or efficacy."

38. Relying on the observations made in the said judgment, it is contended that since there is no difference in principle of the law applicable to a case u/s 10 and that u/s 83, and since the jurisdiction of the Tribunal is only to see whether a prima facie case is made out in respect of the misconduct charged, the finding in a proceeding u/s 33 as regards the fairness and propriety of the domestic enquiry is conclusive and it cannot be responded in a subsequent proceeding u/s 10. This contention is based on misreading of the said judgment of the Supreme Court. This case no doubt has enlarged the scope of enquiry u/s 33. But it does not support the contentions of the appellants. In case where the employer held no enquiry or domestic enquiry held by him is found to be vitiated by the authority u/s 33(2) (b), the right of the employer to justify the action of discharge or dismissal taken by him against the workman by adducing evidence for the first time before such authority has been recognised. Even if the entire matter is open before the authority, the authority has limited jurisdiction to go into the question of the validity of the domestic enquiry and the bona fides of the

employer. In that case the Supreme Court held that the Tribunal was not competent to reappreciate or reappraise the evidence in exercising the jurisdiction u/s 83. Although, the Supreme Court in that case did not consider any of its earlier decisions, even then there is no conflict or inconsistency in the ultimate conclusion of the Supreme Court in that case. This will be evident from the following observations:

"On the principles laid down by this Court even though there was no defect in the domestic enquiry the Tribunal was entitled to examine the evidence in the domestic enquiry in order to find out whether a prima facie case was made out or if the finding are perverse. The Tribunal was not, however, competent to reappreciate or reappraise the evidence"

(Emphasis supplied).

39. Reliance has also been placed in the case of Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, , There the Supreme Court after considering, inter alia, its judgment in the case of The Lord Krishna Textile Mills Vs. Its Workmen, held:

In proceedings u/s 33(2) (b) of the Act the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Order and principles of natural justice has been held; (ii) whether a prima facie case or dismissal based on legal evidence adduced before the domestic tribunal is made out, (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee, regard being had to the position settled by the decisions of the Court in Bengal Bhatdee Coal Co. v. Ram Probesh Singh".

40. It was, therefore, contended by the learned Counsel for the appellants that the prima facie aspect of the matter is only confined to whether, the dismissal of the workmen was based on legal evidence adduced before the domestic enquiry was held. We are unable to accept this contention. The Supreme Court did not hold that the ultimate conclusion of the Tribunal in granting or refusing permission u/s 33(2) (b) is not prima facie one. In that case it was not considered that in a proceeding u/s 33(2) (b), the Tribunal has no power to adjudicate. The decisions of the Supreme Court which laid down that the authority u/s 33(2) (b) has no jurisdiction to adjudicate, have not been overruled nor were they considered by the Supreme Court in that case.

41. We may, however, refer to another decision of the Supreme Court in the case of Punjab Beverages Pvt. Ltd. v. Suresh Chand and another reported in AIR 1970 SC 995 where the Supreme Court held as follows:

Where the Tribunal entertains in application for approval u/s 33(2) (b) on merits, it applies its mind and considers whether the dismissal of the workman amounts to victimisation or unfair labour practice and whether a prima facie case has been

made out by the employer for the dismissal of the workman. If the Tribunal finds that either no prima facie case has been made out or there is victimization . or unfair labour practice, it would refuse to grant approval and reject the application on merits. Then of course the dismissal of the workmen would be void and inoperative, but that would be because the Tribunal having held that no prima facie case has been made out by the employer or there is victimisation or unfair labour practice, it has refused to lift the ban".

42. The Supreme Court in the case of Lord Krishna Textile Mills (Supra) held that in dealing with employer's application, the authority has to consider whether a prima facie case for according approval has been made out or not. There the Supreme Court expressed its disapproval of the manner in which the Tribunal went into evidence and came to its own finding disregarding the findings of the domestic enquiry. There the Supreme Court observes as follows:

According to the Tribunal the charge sheets should have been more specific and clear and the evidence should have been more satisfactory. Then the Tribunal has proceeded to examine the evidence, referred to some discrepancies in the statements made by witness and has come to the conclusion that the domestic enquiry should not have recorded the conclusion that the charges have been proved against the workmen in question. In our opinion in making these comments against the findings of the enquiry the Tribunal clearly lost sight of the limitations statutorily placed upon its power and authority in holding the enquiry under S. 33(2) (b). It is well known the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider facts but these considerations are irrelevant where the jurisdiction of the court is limited as under S. 33(2) (b). It is conceivable that even in holding an enquiry u/s 33(2) (b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever only in such a case it may be entitled to consider whether, approval should be accorded to the employer or not".

43. It is, therefore, abundantly clear that the Tribunal in exercising the power u/s 33(2) (b) does not decide the issue on merits. A prima facie view has to be taken by the Tribunal in coming to the conclusion whether the permission shall be accorded or withheld. It is only in a proceeding u/s 10 the Tribunal adjudicates an issue. There the tribunal has to go into evidence and come to a definite finding.

44. In the. premises, we are of the view that the authority u/s 33(2) (b), whether it is Tribunal or Labour Court or Conciliation Officer, in according or withholding permission or approval is only empowered to examine if a prima facie case has been made by the employer for discharge or dismissal of a workman. In coming to such a prima facie conclusion, the authority may, depending on the facts and circumstances of the case, examine the evidence, or take evidence as to the validity of the domestic enquiry, but the scope, nature and

extent of enquiry being limited, the determination is not a final adjudication on any issue. Whatever may, therefore, be the finding of such authority in coming to a prima facie conclusion would not be a finding on the merits of the case. Therefore, the findings recorded in a proceeding u/s 33(2) (b) of the Act will not operate as res judicata in a subsequent proceeding u/s 10 of the Act, whether such finding related to the fairness and propriety of the domestic enquiry or the misconduct of the workman. Res judicata may not also apply as there may not be identity of parties in the two proceedings.

45. For the reason aforesaid, these appeals fail and are dismissed. Rules are discharged. All interim orders are vacated. The respective Tribunal shall dispose of the reference within three months from the date of communication of this order.

46. There will be no order as to costs.

47. As the cases do not involve any substantial question of law of general importance, which needs to be decided by the Supreme Court, we reject the prayer for certificate for appeal to the Supreme Court.

Mookerjee, C.J.

48. I agree.

49. Petition dismissed.

Bhagabati Prosad Banerjee, J.

50. I agree.