

(2000) 07 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 17914 to 17930 of 2000

Management of BPL Limited, Bangalore

APPELLANT

Vs

Bindur and Others

RESPONDENT

Date of Decision : 03-07-2000

Acts Referred:

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

Citation : (2000) 87 FLR 328 : (2000) ILR (Kar) 3386 : (2000) 6 KarLJ 279 :
(2000) 3 KCCR 2149 : (2000) 2 LLJ 769

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri K. Kasturi, for Kasturi Associates, for the Appellant; Sri T.S. Anantha Ram, for the Respondent

Judgement

1. A common question arises in these writ petitions and therefore, heard both sides at the stage of admission itself on main petition and disposed them by this order.

2. The question that arises for consideration is as to whether the adjustment of one month's salary payable to the respondents after cessation of the earlier order of dismissal would amount to non-compliance of the provisions of Section 33(2)(b). To answer this question the facts which are necessary are as follows:

The respondents herein are the workmen under the petitioner-company. Certain disputes regarding the charter of demands, termination of trainees and discharge of probationers were referred for adjudication to the Industrial Tribunal, Bangalore, by the State of Karnataka which came to be registered as Industrial Dispute No. 27 of 1999 which is still pending consideration. In the meantime, the petitioner herein issued show-cause notice to these respondents and enquiries were conducted wherein the respondents participated. Ultimately, the enquiry officer has held that the respondents were guilty of misconduct. These findings were forwarded to the respondents for their representations and on consideration of the respondents' representations, the Disciplinary Authority passed orders of

dismissal from service w.e.f. the dates mentioned therein. As Industrial Dispute No. 27 of 1999 was pending serial applications were filed seeking approval of the dismissal of the respondents as required u/s 33(2)(b) of the Industrial Disputes Act which came to be tried by the Industrial Tribunal. The respondents filed objections contending inter alia that the applications are not maintainable. After the arguments were heard and the matter stood posted for orders, the Management filed a memo in each case to the effect that the petitioner has already issued letter to the opposite party rescinding the order of dismissal and treating the opposite party as in service until further orders by the applicant and sought permission to withdraw all the first applications. Subsequently, the Industrial Tribunal passed an order on the basis of the memo permitting the petitioner to withdraw the applications filed by it for the reasons stated in the memo. Thereafter, the petitioner had paid the subsequent wages which were due till the date of filing of the applications and also one month's salary in advance as contemplated u/s 33(2)(b) of the Act and simultaneously also filed serial applications seeking approval of the dismissal order passed subsequently. Yet again the respondents raised objections that the applications are not maintainable, merely on the ground that the petitioner is not entitled to deduct/adjust the amount of one month's salary paid to the respondents while filing the first serial applications and therefore, the petitioner has not complied with the payment of wages in full. The learned Industrial Tribunal dismissed the applications as not maintainable by upholding the objections raised by the respondents. Hence, these petitions are filed before this Court.

3. It is settled law that to prefer a serial application, it is a mandatory requirement that three things mentioned in the proviso to Section 33(2)(b) will have to be complied with. This question was considered by their Lordships of the Supreme Court in *Strawboard Manufacturing Co. Vs. Gobind, ,* as follows:

"The proviso contemplates three things mentioned therein, namely.--

- (i) dismissal or discharge;
- (ii) payment of wages; and
- (iii) making of an application for approval,

to be simultaneous and to be part of the same transaction, so that the employer when he takes action u/s 33(2)(b) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the Tribunal for approval at the same time. The employer's conduct should show that the three things contemplated under the proviso, namely.--

- (i) dismissal or discharge;
- (ii) payment of wages; and
- (iii) making of an application,

are parts of the same transaction. If that is done, there will be no occasion to fear that the employee's right u/s 33-A would be affected. The question whether the application was made as part of the same transaction or at the same time when the action was taken, would be a question of fact and will depend upon the circumstances of each case".

4. In this case there is absolutely no dispute in regard to the order of dismissal or discharge passed by the petitioner making of an application for approval and also the payment of wages from the date of rescinding the dismissal order and also one month's wages in advance as contemplated under the Act. The only dispute as mentioned earlier is that the petitioner has adjusted one month's wages paid in advance while filing the first set of serial applications before the Tribunal.

5. The learned Counsel for the respondents submitted that the petitioner is not entitled to adjust the amount. On the other hand, according to them, the petitioner ought to have paid wages from the date of dismissal without including this as the amount paid towards wages. Therefore, he contends that the petitioner has not complied with the mandatory requirement of law. As far as the principles enunciated by the Supreme Court as well as the High Court in regard to the mandatory nature of the compliance, are not in dispute.

6. The Labour Court has relied on a decision of this Court in Prabhakar H. Manjare and Another Vs. Indian Telephone Industries Limited, Bangalore and Another, . In that case, the facts are that the Management filed an application seeking approval before the authority. The application came to be dismissed on merits, however, without reinstating the employees, the management continued to persist with the earlier order of dismissal passed against the employees. It was contended that there could not be a second order of dismissal, unless the employees were taken back to work. It was further contended that despite the employees having been kept under suspension from May 4th, 1984 and without paying them full back wages, the Management chose to terminate the services by paying them only one month's salary u/s 33(2)(b). Therefore, the action of the respondent-Management were termed to be unfair labour practice. From this it is clear that, in the case before the Division Bench, the employees workmen were not taken back to their work. On the other hand, they persisted the dismissal order and failed to pay back wages for the period of dismissal. Therefore, the Division Bench held that there is no compliance of the mandatory requirement of Section 33(2)(b). However, the learned Tribunal without even going through the judgment passed by the Division Bench merely stated that these facts are applicable to the present case. In the case on hand, the petitioner had filed serial applications on earlier occasion and in view of technical objections raised, filed the memo referred to above rescinding the dismissal order and thereafter the employees were deemed to have been taken into service and whatever the salary and wages were not paid during the period till the cessation of the earlier dismissal order were paid in entirety to the employees. While doing

so, one month's salary paid while filing this serial application was treated to be their salary though they did not work during that period. To substantiate that, the statement of salary is filed, and after adjusting that one month's salary, the petitioner had issued a cheque each towards one month's salary payable to the respondents while filing the second application. Therefore, it is clear that there is no doubt that the petitioner had paid the entire amounts to the respondents, and there is no arrears of back wages. In addition, one month's advance salary also has been paid to each respondent.

7. The learned Counsel for the respondents also placed reliance on a decision rendered by the Supreme Court in *S. Ganapathy and others Vs. Air India and another*, wherein their Lordships have held that by passing an order of discharge or dismissal, de facto relationship of employer and employee is ended, but not de jure, for that could happen when the Tribunal accords its approval. The employee thus gets factually unemployed from the date of the approval of application in the sense that he is not called to work and is paid only a month's wages representing the succeeding month of his unemployment. The relationship of employer and employee is legally not terminated till approval of discharge or dismissal is given by the Tribunal.

8. If the Tribunal were to refuse approval merely on the ground that statutory tax deduction stands in the way to grant of approval, it could legitimately make its order conditional on making good such payment.

9. In *Mysore Machinery Manufacturers Ltd. Vs. Assistant Commissioner of Labour and Conciliation Officer*, the Division Bench of this Court also considered the scope of Section 33(2)(b) and held that the mandatory requirements shall be followed to maintain the application before the Industrial Tribunal.

10. The Bench of Rajasthan High Court in *Dinesh Khare Vs. Industrial Tribunal and Others*, that the conditions laid down in the proviso to Section 33(2)(b) are mandatory in nature and if any of the said conditions are not satisfied by the employer, the application for approval is liable to be dismissed.

11. As far as the law laid down in the aforesaid decision by the Supreme Court, our High Court and also the Rajasthan High Court are concerned, there is absolutely no quarrel. As indicated above, the question is whether the employees are entitled to forfeit the amount already paid by the employer while filing the first application.

12. After having given my thoughtful consideration, I am of the firm opinion that the payment made by the petitioner while making the first set of serial applications before the Tribunal shall be treated as payment for the period for the succeeding month after the dismissal order was rescinded by the petitioner under the assumption that they continued to be in service and their wages are paid by the petitioner, thus there is no amount due as wages. Subsequently, when the serial applications were made, admittedly the petitioner has paid one month's wages in advance and that is a due compliance of Section 33(2)(b). Therefore,

the learned Industrial Tribunal without application of its mind and not applying the principles of law enunciated by their Lordships referred to above properly to the facts of the case on hand, merely quoting the citations dismissed the applications which order requires to be set aside. In these cases, the petitioner issued two cheques in each case, one cheque pertaining to back wages and another cheque towards wages for advance amount. Even for that matter the latest wages being paid. There is no dispute as far as these payments are concerned.

13. In the result therefore, I proceed to pass the following:

ORDER

These petitions are allowed. The impugned orders are set aside. The matter is remitted to the Industrial Tribunal to restore all the cases referred to in these petitions and proceed to consider the case in accordance with law after giving full opportunity to both the parties. However, there is no order as to costs. "