

(2018) 11 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 46712 Of 2017 (L-RES)

M/S. Wonderla Holidays Limited

APPELLANT

Vs

Assistant Labour Commissioner

RESPONDENT

Date of Decision : 05-11-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(3), 33(4)
Industrial Disputes (Karnataka) Rules, 1957 — Rule 62, 63

Citation : (2018) 11 KAR CK 0001

Hon'ble Judges : Raghvendra S. Chauhan , J

Bench : Singal Bench

Advocate : Prashanth B. K, Anantharam T. S, Vasanth V. Fernandies

Final Decision : Partly Allowed

Judgement

1. Aggrieved by the order dated 16.09.2017, passed by the Assistant Labour Commissioner, ("the learned Commissioner", for short), Bengaluru

Division, whereby the learned Commissioner has declared five workmen of the appellant as "Protected Workmen", for the year 2017-18, the

petitioner, M/s. Wonderla Holidays Limited, has approached this court.

2. Briefly the facts of the case are that the petitioner is a Public Limited Company incorporated under the Companies Act, 1951. It is engaged in the

business of running Amusement Parks offering a wide range of water and other adventure sports. In the year 2000, it opened its first amusement park

at Kochi, in 2003 in Bangalore, and in 2014 in Hyderabad. According to the petitioner, the service condition of its workmen are governed by the

Certified Standing Orders and the terms laid down in the appointment orders.

3. On 04.04.2017, the respondent No.2, Wonderla Karmika Sangha, submitted a letter to the petitioner-management requesting it to recognise five of

the Office bearers of the Trade Union, namely Mr. Ravi Kumar H. N., Mr. Kanthraju .C, Mr. Rajshekara K. B., Mr. Yathish K. P., and Mr.

Thoppegowda P. D., as protected workmen under Section 33 (3) of the Industrial Disputes Act, 1947 ("the Act", for short), for the year 2017-18.

However, the petitioner did not respond to the said letter. For, the first three persons were not only facing departmental enquiry, but were also facing criminal charges against them. Since the petitioner did not reply to the said letter, on 27.04.2017, the respondent No.2 filed a petition before the learned

Commissioner for declaring the aforementioned five persons as protected workmen under Section 33 (3) of the Act.

4. On 22.06.2017, the petitioner filed its objections.

It clearly pointed out that Mr. Ravi Kumar H. N., Mr. Kanthraju .C, and Mr. Thoppegowda P. D., could not be declared as protected workmen as

they were under suspension due to the pendency of departmental enquiry. It was also pointed out that these three persons were undergoing criminal

trial with regard to FIRs lodged by the petitioner. With regard to Mr. Ravi Kumar H. N., it was specifically pleaded that he was issued with a warning

letter on 20.10.2015 for indulging in acts of deliberate slow down, and wilful refusal to carry out any work assigned to him amounting to tool down

strike. Again on 09.11.2015, he was issued another warning letter for desisting from such activities. On 09.12.2015, he was issued with a charge

sheet-cum-show cause notice in which it was alleged that he was indulging in wilful insubordination, wilful slowing down of work, leaving working spot

without permission, and acting prejudicial to the interest of the Company. By order dated 16.12.2015, he was suspended from work. According to the

petitioner he was facing a disciplinary enquiry at the relevant time when the application for declaring him as protected workman was filed. The

petitioner also pleaded that since Mr. Ravi Kumar H. N., was distributing pamphlets wherein he had falsely claimed that the petitioner's amusement

park was working with machineries which were not well maintained, thus a disaster could occur at the amusement park. It was also alleged that he

was forcibly collecting money from the customers; he was chasing them away from the Amusement Park if the customer refused to pay the money.

Due to the said criminal complaint, Mr. Ravi Kumar H. N., was facing a criminal trial for different offences under the Indian Penal Code. Similar

statements were also made with regard to Mr. Kantharaju .C, and Mr. Thoppegowda P. D.

5. With regard to Mr. Rajshekara K. B., Mr. Yathish K. P., the petitioner claimed that they could not be declared as protected workmen for they have

been transferred to the Amusement Park at Hyderabad. Thus, they were no longer working with the establishment. Therefore, considering the fact

that three workmen were facing departmental enquiries and criminal trials, considering the fact that two workmen had been transferred to another

establishment, the special status of being protected workmen could not be bestowed upon them.

6. In rejoinder, the respondent No.2, substituted the names of Mr. Sharanappa M Gali , and Mr. Govardhan B. A., in place of Mr. Rajshekara K. B.,

and Mr. Yathish K. P. However, the petitioner pointed out that neither of these two newly added persons could be declared as protected workmen as

they had been dismissed from service, by order dated 13.09.2017 on the basis of proven acts of serious misconduct committed by them.

7. However, notwithstanding the clear position taken by the petitioner, by order dated 16.09.2017, the learned Commissioner declared the five persons,

namely Mr. Ravi Kumar H. N., Mr. Kantharaju .C, Mr. Thoppegowda P. D., Mr. Govardhan B. A., and Mr. Sharanappa M. Gali, as protected

workmen under Section 33 (3) of the Act. Hence, this petition before this Court.

8. This case raises interesting legal issues with regard to the scope and ambit of Section 33 (3) of the Act, read with Rule 62 of the Industrial Disputes

(Karnataka) Rules, 1957 ("the Rules", for short):-

1) Whether a workman can claim the special status of "protected workman" automatically under Section 33 (3) of the Act inter alia on the ground that

he/she is a member of the Executive, or an office-bearer of a registered trade union, or not?

2) Whether the status of "protected workman" can be denied to such a workman, or not ?

3) Whether the said status can be denied inter alia on the ground that the workman is facing a departmental inquiry and/or a criminal trial, or not ?

4) Whether the mere filing of an F.I.R. against a workman would disentitle the workman from being declared as "protected workman", or not ?

5) Whether the workman becomes disentitled to claim the special status as a

""protected workman"" after criminal charges are framed, but before a conviction is recorded ?

6) Whether it is essential that the workman should be facing a criminal trial for ""serious offences"", or not, before he/she can be denied the special

status of being declared as a ""protected workman"" under Section 33 (3) of the Act ?

9. Since the answers to these issues would have great ramifications, by order dated 08.11.2017, this court invited Mr. Subba Rao, and Mr. P. S.

Rajagopal, the learned Senior Advocates, and Mr. Pradeep Sawkar to address on these issues.

10. Mr. S. N. Murthy, the learned Senior Counsel assisted by Mr. Prashanth B. K., and Mr. Somashekar, the learned Senior Counsel for the

petitioner, has raised the following contentions before this court :-

Firstly, Section 33 (3) of the Act, read with Rule 62 of the Rules carve out a special category of workmen called the 'protected workmen'.

Secondly, the special status is not bestowed upon the workmen ipsi dixit, merely by the Trade Union filing an application before the management.

Thirdly, the petitioner was justified in denying the special status of protected workman to those three workmen who were facing departmental

enquiries and criminal charges before the application was moved by the Trade Union. Furthermore, since two workmen who had been named in the

application, namely Mr. Govardhan B. A., and Mr. Sharanappa M Gali, were dismissed from service, they could not be bestowed the special status of

protected workmen. In order to buttress this plea, the learned counsel has relied on the two Division Bench judgments of this court, namely Bharat

Fritz Werner Ltd., v. Assistant

Labour Commissioner, Division No.11 [(2011) II LLJ 850 KANT] and M/s. Fouress Engineering (India) Ltd. v.

Fouress Engineering and The Assistant Labour Commissioner [ILR 2013 KAR 1531].

Fourthly, the learned Commissioner is not justified in granting the special status to the five workmen ostensibly on the ground that they were not facing

any departmental enquiries vis-a-vis the criminal charges. It is not necessary that the departmental enquiry must relate to the criminal charges. It is

sufficient if due to a misconduct committed by the workman, the workman is

facing departmental enquiry. According to the learned Senior Counsel, maintenance of discipline in workforce is sine quo non condition both for ensuring industrial peace, and for increasing the industrial output. Therefore, those who indulge in activities which disturb industrial peace and adversely affect industrial production, such workmen do not deserve the special status of protected workmen.

Fifthly, the learned Commissioner has erred in holding that since the workmen were not convicted of serious offences, they should be bestowed the special status of being protected workmen. It is not just the serious offences which may disturb the industrial harmony, even minor offences, such as of assault and theft, may jeopardise industrial peace. Therefore, the reasoning given by the learned Commissioner is flawed.

Sixthly, since the workmen are not entitled to the special status automatically, the learned Commissioner was required to apply his mind to the facts and circumstances of the case. Considering the alleged misconduct and the criminal allegations, the learned Commissioner should have denied the status of protected workmen to Mr. Ravi Kumar H. N., Mr. Kanthraju .C, and Mr. Thoppegowda P. D.

Lastly, since the services of Mr. Govardhan B. A., and Mr. Sharanappa M Gali were terminated by dismissal order dated 13.09.2017, they were no longer the workmen of the petitioner-management. Therefore, the learned Commissioner should not have bestowed the status of protected workmen upon them.

11. On the other hand, Mr. T. S. Ananthram, the learned counsel for the respondent No.2, the Trade Union, has raised the following counter-contentions before this court:-

Firstly, both Section 33 (3) of the Act, and Rule 63 of the Rules do not bestow any discretionary power upon the management to refuse to grant the status of protected workman. If the workman fulfils the following conditions, firstly, that he is a workman in the establishment, secondly he is a member of the Executive, or he/she is any other officer, thirdly he/she represents the workmen, and fourthly the names of the workmen are within the maximum limit prescribed by Section 33 (4) of the Act, then the management has no other option, but to grant the status of protected workman to such workman. Hence, the grant of special status is an automatic one.

Secondly, relying on the case of *Batra Hospital & Medical Research Centre v. Batra Hospital Employees' Union* [(2013) II LLJ 132 (Del)] the

learned counsel has pleaded that once an application is filed by the Trade Union, for granting the status of protected workmen upon certain employees,

the management is required to act within fifteen days from the date of receipt of the application. In case, the management does not take any positive

steps within the stipulated period, then the workmen are deemed to be recognised as 'protected workmen'. According to the learned counsel, in the

abovementioned case, the Hon'ble Delhi High Court had noted the judgments passed by this court, and relied upon by the learned counsel for the

petitioner. Since the management had not responded to the application filed by the respondent No. 2, for declaring the workmen, mentioned above, as

protected workmen, they are deemed to be recognised as protected workmen.

Thirdly, if the interpretation given by the learned Senior Counsel were to be accepted that the bestowal of special status of protected workman is not

automatic, it would denude Section 33 (3) of the Act, of the very purpose for which it was enacted, namely to provide a shield of protection to those

workmen who are representing the interest of the members of the Trade Union.

Fourthly, since the management and the Trade Union generally have their differences of opinion, and at times, may have sharp differences, instances

are not lacking when the management has filed false and frivolous criminal cases against the members of the Executive Committee of a Trade Union,

or against the office bearer of a registered Trade Union. If such persons can be denied the status of ""protected workmen"" on the ground that they are

facing departmental inquiry and/or criminal trial, then a weapon would be readily available in the hands of the management to deny the workman the

special status by filing false cases against him/her. While throwing a ring of protection around the members of the Executive or the office-bearer of a

registered Trade Union, the law could not have intended that the shield of protection could easily be pierced by a clever management.

Fifthly, since under the Common Law a person is presumed to be innocent till proven guilty, the mere pendency of a criminal case cannot deny the

members of the Executive or other office-bearer of the registered Trade Union the special status of ""protected workmen."" While facing a criminal

trial, the workman would be presumed to be innocent. To deny the workman the

special status of "protected workman", ostensibly on the ground of pendency of a criminal trial, is to visit him/her with adverse consequence, even before he/she is declared to be guilty of the alleged offence(s).

Sixthly, since in the present case the departmental enquiry against the three workmen did not relate to the criminal charges framed against them, the learned Commissioner was justified in not applying the ratio of Fouress Engineering Ltd. (supra) to the present case.

Seventhly, since Mr. Govardhan B. A., and Mr. Sharanappa M Gali, were dismissed on 13.09.2017, and the impugned order was passed on

16.09.2017, the petitioner did not bring it to the notice of the learned Commissioner that these two workmen were, indeed, dismissed from their

service. In order to buttress this plea, the learned counsel has submitted the order sheets of the learned Commissioner. Hence, according to the

learned counsel, the learned Commissioner was justified in allowing the application filed by the workmen and in bestowing the status of "protected

workman" on all the five workmen. Thus, the learned counsel has supported the impugned order.

12. Mr. Subba Rao, and Mr. P. S. Rajagopal, the learned Senior Advocates, in unison, have submitted the following arguments before this court:-

Firstly, in the original Industrial Disputes Act, 1947, there was no provision for granting the special status of protected workmen to the leaders of the

Trade Union. However, with the increase in the Trade Union activities, with the increase in the disharmony erupting between the management and the

trade union leaders, in order to protect the interest of the labour class, Section 33 (3) of the Act was brought in by way of an amendment. The very

object of Section 33 (3) of the Act is to place a shield of protection around those workmen who are working in the establishment, who are the

members of the Executive body of the Trade Union, or any other officers of the Trade Union, who are promoting the interest of the Trade Union

members. The Trade Union members were also granted the right to recommend the names of those officers in whom they had confidence that they

would protect the interest of the workmen. Therefore, the Trade Union members could inform the management, and seek the grant of special status

of protected workmen for such trusted workmen.

Secondly, neither Section 33 (3) of the Act, nor Rule 62 of the Rules, prescribes

any disqualification for those workmen who should be granted the special status of protected workmen. Therefore, workmen who are facing either a departmental enquiry, or a criminal trial cannot be disqualified from being recognised as protected workmen.

Thirdly, Rule 62 of the Rules uses the words ""shall recognise such workmen to be protected workmen"". the use of the word ""shall"" clearly indicates that it is a mandatory provision. Therefore, except for the limitation placed by Section 33 (4) of the Act, i.e., the extent to which the protection can be given to the number of workmen, no other limitation can be read. Hence, in case, the requirement of Section 33 (4) of the Act is fulfilled, then the recognition of a workman as 'protected workman' is automatic.

Fourthly, although there is an allegation against three workmen, namely Mr. Ravi Kumar H. N., Mr. Kanthraju .C, and Mr. Thoppegowda P. D., that they were distributing pamphlets to the customers warning them about the dangers caused by the machinery used by the amusement park, such an act does not fall within the word 'misconduct'. For, the workmen were duty bound to protect the interest of public at large. Therefore, the criminal charges framed against them, and the departmental enquiries held against them cannot disqualify them from being bestowed the special status of protected workmen.

Therefore, the learned Senior Counsels have supported the impugned order.

13. Heard the learned counsel for the parties, perused the impugned order, and the case law produced by the learned counsel.

14. Undoubtedly, industrial peace is of paramount interest both for the healthy growth of the industry itself, and for the robust growth of the national economy. Since a house divided cannot stand, the conflict between the management and the labour would sound the death knell of an industry. Thus, the object and purpose of the Act is to preserve and promote industrial peace between the management and the labour--the two main stakeholders in any industry. Hence, while interpreting the provision of the Act, a purposive interpretation would have to be adopted.

15. Section 33 (3) of the Act is as under:

33(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial

dispute, take any action against any protected workman concerned in such dispute?

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing the authority

before which the proceeding pending. Of is Explanation.- For the purposes of this sub-section, a "protected workman", in relation to an establishment,

means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is

recognised as such in accordance with rules made in this behalf.

16. Rule 62 of the Rules is as under:

62. Protected Workmen.- (1) Every registered trade union connected with an industrial establishment, to which the act applies shall communicate to

the employer, before the [30th April] every year, the names and address of such of the officers of the union who are employed in that establishment

and who in the opinion of the union, should be recognized as "protected workmen". Any change in the incumbency of such officer shall be

communicated to the employer by the union within 15days of such change.

(2) The employer shall subject to Section-33, Sub-Section (4) recognized such workmen to be

"protected Workmen" for the purposes of sub-sec(3) of the said Section and communicate to the union in writing , within 15days of the receipt of

the names and addresses under sub rule(1), the list of workmen recognized as "protected workmen" for the period of 12months from the date of

such communication.

(3) where the total number of names received by the employer under sub-Rule (1) exceeds the Maximum number of protected workmen, admissible

for the establishment, under Section 33, Sub-section(4), the employer shall recognized as protected workmen only such maximum number of workmen:

Provided that, where there is more than one registered trade union in the Establishment, the maximum number shall be so distributed by the employer

among the unions that the numbers of the recognized protected workmen in individual unions bear roughly the same proportion to one another as there

membership figures of the unions. The employer shall in that place intimate in writing to the President or the Secretary of the Union the number of

protected workmen allotted to it:

Provided further that where the number protected workmen allotted to the union under sub rule, false short of the number of officers of the union

seeking protection, the union shall be entitled to select the officers to be recognized, as protected workmen. Such selection shall be made by the union

and communicated to the employer within 5days of the receipt of the employer's letter.

(4) when a dispute arises between a employer and any registered Trade Union in any matter connected with the recognition of the protected

workmen under this rule, the dispute shall be referred to the Conciliation Officer concerned, whose decision thereon shall be final.

17. A bare perusal of Section 33 (3) of the Act clearly reveals that the Explanation defines the term "protected workmen". A "protected workmen" is

one who enjoys certain status, i.e. "being a member of the executive or other office bearer of a registered trade union connected with the

establishment". Secondly, such workmen would have to be recognized as a protected workmen in accordance with rules made in this behalf.

18. Rule 62 of the Rules can be subdivided into three parts: firstly, it empowers a registered Trade Union to send a list of workmen to the employer

whom the Trade Union wants to be recognised as protected workmen. Secondly, sub-rule (2) requires the employer to recognise the persons so

named by the Trade Union as protected workmen. However, according to the third part of Rule 62 of the Rules, namely sub-rule (4), in case, there is

a dispute between the employer and registered Trade Union with regard to any matter connected with the recognition of the protected workmen, the

dispute shall be referred to the concerned Conciliation Officer whose decision would be final. Therefore, clearly sub-rule 4 contemplates a situation

where a dispute may arise between the employer and registered Trade Union over the names of workmen who should be recognised as protected

workmen. Moreover, Rule 62 of the Rules does not impose any liability upon the employer if he/it fails to recognise the workmen so named by the

Registered Trade Union as protected workmen. Therefore, the word "shall" used in sub-rule 2 of the Rules does not make it a mandatory condition

that in all circumstances, the employer must recognise the workman named by the registered Trade Union as protected workman. Hence, the learned

counsel for the respondent are not justified in pleading that the recognition of a workman as a protected workman is an automatic one.

19. It is often said that Law is not what is enacted by the Legislature, Law is how it is interpreted by the Courts. In the case of Fouress Engineering

Ltd. (supra), this court has interpreted Section 33 (3) of the Act. This court opined as under:

Â 11. In the light of the aforesaid judgments and on a careful perusal of the aforesaid statutory provisions, it is clear, every registered Trade Union

connected with an Industrial Establishment shall communicate to the employer before 30th April every year, the names and addresses of such other

Officers of the Union, who are employed in the establishment and who in the opinion of the Union should be recognized as `Protected Workmen'. On

such written request being made, the employer has to recognize such workmen to be `Protected workmen' for the purpose of Sub-Section (3) of

Section 33 of the Act. After such recognition, the Management is under an obligation to communicate to the Union in writing, the list of workmen

recognized as `Protected Workmen'. The said recognition has to be granted within 15 days from the date of receipt of such request. Once recognition

is given, it would be valid for a period of 12 months from the date of such communication. The number of persons to be so recognized as `Protected

Workmen' is five, which is maximum. If there are more than one registered Trade Union, depending upon the strength of the said Union, these

`Protected Workmen' have to be distributed among such Unions. If recognition is not made within 15 days from the date of receipt of the

communication, then the Union has a right to raise a dispute and seek a reference to the Conciliation Officer, whose decision thereof shall be final.

Once such a status of a `Protected Workmen' is given to an employee then Sub-Section (3) of Section 33 imposes an embarkment on the employer to

take any action against such `Protected Workmen' without the express permission in writing of the authority before which that dispute is pending. This

is the scheme of the Act. Therefore, the recognition of a `Protected Workmen' is not automatic. Until and unless the employer recognizes the status in

the manner set out in the aforesaid provisions, the employee does not get the status of a `Protected Workmen'. A positive act specifically recognizing

an employee as a protected workmen by the employer is the requirement of law. Therefore, the contention that once a request is made and he is a

Workman as defined under the Industrial Disputes Act, the Management has no option, but to protect the workman, is without any substance.

(emphasis supplied)

20. Of course the learned counsel for the workmen, Mr. Ananthram has relied on the case of Batra Hospital & Medical Research Centre (supra) to

argue that in case the employer does not recognise the workmen so named by the Trade Union, the workmen ""are deemed to be recognised as

protected workmen"". However, a bare perusal of the judgment in Batra Hospital & Medical Research Centre (supra), clearly reveals that while

analysing the scope of Section 33 (3) of the Act, the Hon'ble Delhi High Court has noticed the opinions of various High Court on the issue whether the

workmen can be ""deemed to be"" protected workmen in case the employer does not recognise them as such within fifteen days of the submission of

the list by the Trade Union, or not? The Hon'ble Delhi High Court has clearly noticed that while according to the Hon'ble High Courts of Gujarat and

Calcutta, the workmen are deemed to be protected workmen after the lapse of period of fifteen days, the Hon'ble High Courts of Karnataka, Madras,

Kerala, Bombay and Andhra Pradesh have held that there is no such deemed recognition. In fact, if the employer maintains a quitus, the only remedy

available to the Trade Union is to ensure that the dispute is referred to the Conciliation Officer whose decision shall be final. Hence, the learned

counsel for the workmen is unjustified in claiming that after the lapse of fifteen days, the workmen are deemed to be protected workmen.

21. Since the recognition is neither automatic, nor deemed to be given, the question is whether such recognition can be denied inter alia on the ground

that the concerned workmen are facing either criminal trial, or enquiry, or not?

22. The case of Fouress Engineering Ltd. (supra), dealt with a scenario wherein the workmen were recognised as protected workmen despite the fact

that some of the workmen were dismissed on the ground that they were facing criminal trial and enquiry. This court opined as under:-

If a workman is dismissed from service on the ground of gross misconduct, it is in the interest of the industry and the workmen, such persons are not

given the benefit or a privilege to indulge in such misconduct. Otherwise, law

abiding workmen would get frustrated. Similarly, if a person is charged with a criminal offence, and facing criminal trial, if such person is given the status of 'Protected Workman', it only encourages people to indulge in such illegal activities. The whole object of conferring such a status of 'Protected Workman' is to see that they espouse the cause of workmen while dealing with the Management without any fear of reprisal. If persons who are already indulged in such act are given the status it would send wrong signals. In those circumstances, if a Management in order to maintain industrial peace refuses to recognise them as 'Protected Workmen' they cannot be found fault with. When a Trade Union makes such a request, they should see that the persons to whom such protection is sought are law abiding workmen, who can fight for the cause of the workmen and who do not indulge in illegal activities. Therefore, a positive act specifically recognizing an employee as a protected workmen is required to be taken by the employer. There is an element of discretion vested with the employer in order to protect the interests of the industry and maintain industrial peace which is in the interest of the workforce. Therefore, the rejection of the request for granting the status of a protected workmen either on the ground that there are criminal cases pending against them or on the ground that they are dismissed from service is a good ground and such an action cannot be found fault with.

Thus, if the workman were to face the departmental enquiry, or a criminal trial, they can be denied the special status of 'protected workmen'.

23. Indeed, Mr. T. S. Ananthram, the learned counsel for the workmen, has pleaded that if the status of 'protected workmen' is denied inter alia on the ground that the workmen are facing departmental enquiry, or criminal trial, a powerful tool would be placed in the hands of a scrupulous management who may file frivolous FIRs against the members of the Trade Union. However, the said argument is highly misplaced. For, Rule 62 (4) of the Rules permits that the dispute with regard to the bestowing of special status should be decided by the Conciliation Officer. Hence, the Conciliation Officer is legally required to apply his judicious mind and to examine whether the management is legally justified in denying the special status of 'protected workmen' to the concerned workmen, or not? Obviously, the Conciliation Officer must consider the nature of the offence alleged to be committed by

the workmen, the quality of evidence available to support the allegation, the impact of the alleged misconduct/offence on industrial peace and harmony, and whether the special status can be denied under the facts and circumstances of the case, or not. Therefore, the mere existence of an FIR, or an order framing charges against the workmen would not ipso-facto deny the workmen the special status of 'protected workmen'. The decision has to be left to the discretion of the Conciliation Officer and his/her decisions is final.

24. A bare perusal of the impugned order clearly reveals that the learned Commissioner has declared the workmen as 'protected workmen' ostensibly on the ground that the workmen were neither facing charges for ""serious offences"", nor have they been convicted by the Trial Court. Moreover, the departmental enquiries are merely pending and were not concluded. Thus, the pendency of departmental enquiry cannot deny the workmen the special status of being ""protected workmen"".

25. The reasoning given by the learned Commissioner is untenable for the following reasons:

Firstly, the law does not impose a condition that the workman can be denied the special status of a protected workman, if he/she is facing charges for serious offences. Even if charges are for ""minor offences, such as assault, or wrongful restraint, or wrongful confinement"", causing hurt, or grievous hurt, even such offences are sufficient to disrupt industrial peace and harmony. Therefore, if a workman is facing charges even for minor offences, even then, he can be denied the special status of being a protected workman.

Secondly, Trade Union leaders are meant to be the role model for the rest of the workforce. Since they lead the workforce by their conduct, their conduct has to be above board. Therefore, their conduct has to be pristine. Moreover, by bestowing the special status of ""protected workmen"", certain privileges and protection are bestowed upon the individual workman. Hence, the quality of their behaviour and conduct has to be beyond doubt. Those who break the law, or commit misconduct cannot expect to be given the privilege and protection of being declared ""protected workmen"". Hence, it is not even necessary that a conviction should be recorded against the workman before he can be denied the special status of being a ""protected workman"". Therefore, the reasoning given by the learned Commissioner is unsustainable.

26. Since Mr. Ravi Kumar H. N., Mr. Kanthraju .C and Mr. Thoppegowda P. D., were facing both departmental enquiry and criminal trial, the learned Commissioner was unjustified in declaring them as protected workmen.

27. As far as the case of Mr. Sharanappa M Gali , and Mr. Govardhan B. A., is concerned, it is unclear whether their dismissal from service was

brought to the notice of the learned Commissioner, or not? Since they were dismissed on 13.09.2017, since the impugned order was passed on

16.09.2017, since there is no indication in the order-sheets that the dismissal was brought to the notice of the learned Commissioner, it is not for this

court to comment on the issue whether the learned Commissioner was justified in declaring them as protected workmen, or not?

28. For the reasons stated above, the writ petition is partly allowed. The part of the impugned order dated 16.09.2017, whereby Mr. Ravi Kumar H.

N., Mr. Kanthraju .C and Mr. Thoppegowda P. D., have been declared as ""protected workmen"" is set aside. With regard to declaring Mr. Govardhan

B. A., and Mr. Sharanappa M Gali, as protected workmen, the case is remanded to the learned Commissioner to re-decide the case on the basis of

evidence produced by both the parties. The parties shall be free to raise all their contentions vis-À-vis these two workmen before the learned

Commissioner. The learned Commissioner is requested to decide the issue as expeditiously as possible, and preferably within a period of two months

from the date of receipt of certified copy of this order. No order as to cost.