
(1961) 12 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 1422 of 1960

Peirce Leslie and Co. Ltd., Kozhikode

APPELLANT

Vs

Industrial Tribunal, Kozhikode and Another

RESPONDENT

Date of Decision : 07-12-1961

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 31(1), 33(2), 33(5), 38(4)

Citation : AIR 1962 Ker 220 : (1962) 2 LLJ 169

Hon'ble Judges : G.A. Vaidialingam, J

Bench : Single Bench

Advocate : P.K. Kurien, G. Balagangadharan Nair and K. Sukumaran, for the Appellant; Govt. Pleader for Respondent No. 1; K.N. Karunakaran, K.G. Devarajan and M. Ratnasingh, for the Respondent

Final Decision : Allowed

Judgement

G.A. Vaidialingam, J.—The question that arises for consideration in this writ petition, under Article 226 of the Constitution, relates to the construction to be placed On the proviso to Sub-section (2) of Section 33 of the Industrial Disputes Act, 1947.

2. The management, who is the petitioner herein, charge sheeted the second respondent, for certain acts of misconduct stated to have been committed by him. According to the management, a due and proper inquiry was conducted and it was satisfied that the worker is guilty of misconduct under the Standing Orders of the Company. Accordingly, the petitioner dismissed) the second respondent, by its order dated 6th, August 1959, the dismissal to take effect from 3-6-1959. The petitioner offered one month"s wages to the second respondent who has declined to accept the same.

3. As, an industrial dispute, I. D. 60/59 was pending before the Industrial Tribunal Kozhikode, the petitioner applied to the Industrial Tribunal, by M. P. 303/59 for approval, u/s 33(2) of the Act, of the action taken by the

management. The application, which is dated 6th August, 1959, appears to have been sent by the management on 8th August and actually received by the tribunal on 10th August 1959. It was the case of the management that the second respondent was suffering from small-pox and he applied for financial aid to the Company and he represented to the management that he had to incur medical expenses to the extent of Rs. 108-50. As the management suspected this claim reference was made to the Doctor, who had issued the bill and it came out in evidence that the petitioner has actually incurred medical expenses only in the sum of Rs. 18/-. After framing the necessary charges, and conducting an inquiry, in which the second respondent was given ample opportunity to cross-examine the witnesses and also to adduce evidence on his behalf, the management found him guilty of attempting to cheat the Company and ultimately passed the order of dismissal.

4. The second respondent contested the application of the management alleging mala fides in the conduct of the inquiry. According to him, the management was prompted by the idea of victimising the employee; and he also alleged several irregularities and illegalities regarding the inquiry proceedings and therefore, urged that no approval should be given by the Tribunal.

5. After filing such a written-statement the second respondent filed an application on 28-1-1960, u/s 33-A of the Act, alleging that the management has not complied with the provisions of Section 33(2) of the Act. He raised the contention that he has not been paid one month's wages and the management has not filed an application for approval, before passing the actual order of dismissal. The second respondent also prayed for a joint trial of M. P. No. 303/59 filed by the management, and the application filed by him.

6. This application was again contested by the management on the ground that the complaint petition filed u/s 33-A by the worker, long after receiving notice of the approval application, is not bona fide and not maintainable. The management also urged that the scope of inquiry in application u/s 33(2) filed by the management and the application filed u/s 33-A by the worker are entirely different and in this case the management has not committed any violation of the provisions of Section 33(2) of the Act. They also contested the stand taken by the second respondent that the management should file an application for approval before actually passing an order of dismissal. On the other hand, it was their case that they have, asked for approval strictly in accordance with the provisions of the statute. That is, according to the management, it is not necessary to file an application for approval before the order of dismissal is made and an application filed for approval of an order of dismissal passed by the management is according to them, quite legal and proper.

7. The tribunal, by its order dated 29-5-1960, decided that the application filed by the second respondent u/s 33-A, is to be taken up for consideration only after the disposal of the application filed by the management for approval namely, M. P. 303/59.

8. I may state at this stage that the application filed by the worker u/s 33-A, is now pending before the tribunal as I. D. 96/59.

9. In the application filed by the management for approval M. P. 303/59, the tribunal, after considering the allegations made against the second respondent his defence regarding those allegations, the nature and the manner in which the inquiry was conducted by the management and all other circumstances, came to the conclusion that the management has made out a prima facie case for granting approval, in the circumstances of the case. In particular, the tribunal is of the view that the management is not actuated by any improper motive in starting the inquiry, nor is there any victimisation and unfair labour practice. The tribunal after giving due consideration to the various aspects presented by the management and the second respondent, is also satisfied that there is sufficient materials on record from which the management was justified in coming to the conclusion that there is a prima facie case of attempted cheating made by the second respondent. In consequence, the tribunal is of the view that there is an evidence for a prima facie case against the workers and that the finding of the inquiry officer is correct.

10. Having recorded such findings in favour of the management, the tribunal then considers the question as to whether the application filed by the management after passing an order of dismissal is legal and proper. In this connection, the tribunal considers two decisions bearing on this matter namely (a) the decision of the Bombay High Court in Premier Automobiles Ltd. Vs. Ramachandra Bhimayya Polkam, and (b) of the Rajasthan High Court in Associated Cement Companies Ltd. v. Industrial Tribunal 1959 2 Lab LJ 810. I will have to advert to these two decisions a little later. But I may indicate at this stage, that the view of the Bombay High Court is that an application, u/s 33(2) of the Act, should be made by the management, before passing an order of dismissal or discharge. On the other hand the Rajasthan High Court has taken a different view, and even among the learned Judges there is a slight difference in the approach to be made. Ultimately, the tribunal in the case is of the view that the view; of the Bombay High Court is to be accepted as it is, according to the Tribunal, ""in agreement with the provisions of law".

It is the further view of the tribunal, that in this case inasmuch as the order asking for approval was received by the Tribunal only on 10th August, 1959 and inasmuch as the order of dismissal has been, made on 6th August, 1959, there is violation of Section 33(2) of the Act and therefore, the approval petition is not maintainable. Because of the view expressed by the Tribunal that the application is not maintainable as it has been filed after an order of dismissal has been passed, the Tribunal though it held on the merits in favour of the management that a prima facie case has been made out for grant of approval, ultimately dismissed M. P. 303/59 filed by the management.

11. The order of Industrial Tribunal dismissing the application on the sole ground that it has not been filed before action was taken, is attacked by Mr. P.K. Kurien,

learned counsel for the management-petitioner in this writ petition. The finding of the Tribunal in favour of the management is not being challenged by the second respondent by any other independent proceeding. But no doubt, in the course of his arguments, Mr. K. G. Devarajan, learned counsel for the second respondent, also attacked the finding of the Industrial Tribunal that the management has made out a prima facie case for the grant of approval.

12. Before I go into the legal contentions raised by both the learned counsel regarding the scope of Section 33(2)(b) of the Act it is as well that I disuse of the contentions raised on facts.

13. According to Mr. P.K. Kurien, learned counsel for the management, the entire proceedings, connected with the inquiry regarding the second respondent, will clearly show that the second respondent was given a full and fair opportunity of contesting the allegations made as against him. He referred me to the various items of evidence connected with the inquiry proceedings and placed before the Industrial Tribunal regarding that aspect. Finally, Mr. P.K. Kurien urged that the criticism that the Tribunal has not considered all these aspects before recording a finding in favour of the management is not well-founded.

14. Mr. K. G. Devarajan, learned counsel for the second respondent found it very difficult to dislodge the findings of the Tribunal recorded in favour of the management about the fairness of the inquiry and the various proceedings connected with the same. But Mr. K. G. Devarajan urged that the Tribunal has not given due consideration to the evidence adduced by the second respondent regarding the circumstances under which he made the claim to the management for payment of medical charges. I am not impressed with this contention of the learned counsel. I am satisfied that the Tribunal has given due consideration to the explanation offered by the second respondent as to the circumstances under which he made the claim to the management for payment of medical charges. Therefore, so far as the finding of fact arrived at by the Tribunal that the management has made out a prima facie case for grant of approval is concerned, It has to be sustained.

15. The question that arises for further consideration is as to whether the rejection of the application by the Tribunal on the ground that the application for approval has been made after the management has passed an order of dismissal, is correct in law or not. Broadly speaking, according to Mr. P.K. Kurien, learned counsel for the petitioner, an application filed by the management for approval u/s 33(2)(b) of the Act, after passing an order of dismissal, is perfectly proper and in accordance with the provisions of the statute. In this connection, the learned counsel pressed before me for the acceptance of the views expressed by Mr. Justice Modi, one of the learned Judges, who was a party to the decision of the Rajasthan High Court in 1959 2 Lab LJ 810.

16. On the other hand, Mr. K. G. Devarajan, learned counsel for the second respondent urged for acceptance of the view of the Bombay High Court referred

to above that the management was bound to file an application for approval before an order of dismissal or discharge was passed by management.

17. The learned Government pleader was prepared to proceed on the basis that two views are possible. But ultimately, the stand taken by him, so far as I could see, is for the acceptance of the view expressed by the learned Judges of the Bombay High Court.

18. I may also state that I permitted Mr. V. Bhaskaran Nambiar, learned counsel for the Petitioner, in a connected writ petition namely, O. P. 1510/60 to advance arguments on this question of law. Mr. Bhaskaran Nambiar has asked for leave to raise this question of law in the said writ-petition though that point was not raised before the Industrial Tribunal. Mr. P.K. Kurien, learned counsel for the writ petitioner here, and who was appearing for the management-respondent in O. P. 1510/60, was opposing the request of Mr. Bhaskaran Nambiar in that writ petition to raise this question of law for the first time in this Court. But as I had not made up my mind then, as to whether Mr. Bhaskaran Nambiar should be permitted to raise that point or not, I allowed Mr. Bhaskaran Nambiar to place his contentions also on this point of law, so that I may have the benefit of his arguments. I may also state that after the close of the proceedings I have declined to grant Mr. Bhaskaran Nambiar permission to raise this point for the first time in O. P. 1510/60 and it has also been disposed of by me on merits. Mr. Bhaskaran Nambiar also ultimately pressed for the acceptance of the Bombay view.

19. The various aspects presented before me by all the learned counsel will be adverted to a little later. But this is a convenient stage to refer to the provisions of Section 33, as it originally stood, and as it now stands after the amendment in 1956 and also refer to certain other sections in the statute. Section 33 of the Industrial Disputes Act, 1947, as it stood originally, ran as follows :

"No employer shall, during the pendency of any conciliation proceedings or proceedings before a tribunal in respect of any industrial dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings, nor, save with the express permission in writing of the Conciliation Officer, Board or Tribunal, as the case may be, shall he, during the pendency of such proceedings, discharge, dismiss, or otherwise punish any such workmen except for misconduct not connected with the dispute."

This section was substituted by a new Section 33, by the Industrial Disputes (Appellate Tribunal) Act -- Act XLVIII of 1960. The new Section 33 as incorporated by this Act of 1950, ran as follows :

"33. Condition of service etc. to remain unchanged during pendency of proceedings : -- During the pendency of any conciliation proceedings or proceedings before a Tribunal in respect of any industrial dispute no employer shall --

(a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the Conciliation Officer, Board or Tribunal as the case may be."

20. Section 33, as it now stands, was incorporated by the amendment Act 36 of 1956 and is as follows :

"33. Conditions of service etc. to remain unchanged under certain circumstances during pendency of proceedings : -- (1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,--

(a) in regard to any matter connected with the dispute, alter to the prejudice of the workmen, concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute,--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise that workman;

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

"(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 projected Workman concerned in such dispute --

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

(b) discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation -- For the purposes of this subsection, a "projected workman", in relation to an establishment means a workman who, being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment the number of workmen to be recognised as protected workmen for the purposes of Sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of the one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal under the proviso to Sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, as expeditiously as possible, such order in relation thereto as it deems fit."

21. Section 31, occurring in Chapter VI, relating to penalties, by Sub-section (1) provides.

"31 (1) Any employer who contravenes the provisions of Section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

22. Section 33-A of the Act is as follows : "33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings. Where an employer

contravenes the provisions of Section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Labour Court Tribunal or National Tribunal and On receipt of such complaint that Labour Court, Tribunal or National Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit, its award to the appropriate Government and the provisions of this act shall apply accordingly.

23. Section 38 (1) gives power to the appropriate Government, subject to the condition of previous publication, to make rules for the purpose of giving effect to the provisions of the Act.

Section 38 (2) states that the rules may provide for all or any matters mentioned

in Clauses (a) to (g) therein and such power is without prejudice to the generality of the powers given u/s 38 (1). Sub-section (3) of Section 38 states that rules made under the section may provide that a contravention thereof shall be punishable with fine not exceeding Rs. 50/-. Section 38 (4) is as follows :

""Section 38 (4). All rules made under this section shall, as soon as possible after they are made, be laid before the State Legislature or where the appropriate. Government is the Central Government, before both Houses of Parliament."

There is no controversy that the Central Government and the Kerala State have framed rules under the Act and also prescribed the forms for various matters connected therewith.

24. Rule, 60 of the Rules framed by the Central Government in this behalf is as follows :

"Rule 60, Application u/s 33 : --(1) An Employer intending to obtain the express permission in writing of the Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal as the case may be under Sub-section (1) or Sub-section (3) of Section 33 shall present an application in Form J in triplicate to such Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(2) An employer seeking an approval of the Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal as the case may be, of any action taken by him under Clause (a) or (b) of Sub-section (2) of Section 33 shall present an application in Form K. in triplicate to such Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(3) Every application under Sub-rule (1) or Sub-rule (2) shall be verified at the foot by the employer making it or by some other person proved to the satisfaction of the Conciliation Officer, Board, Labour Court, Tribunal or National Tribunal to be as acquainted with the facts of the case.

(4) The person verifying shall specify by reference to the numbered paragraphs of the application what he verified of his own knowledge and what he verifies upon information received and believed to be true.

(5) The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified."

I may also state that Form J prescribed under the Rules, relates to an application to be filed under Sub-rule (1) of the Rule 60 which in turn, relates to an application u/s 33(1) or Section (3) of the Act. Form K relates to an application under Sub-rule (2) of Rule 60 which in turn, deals with an application filed under Clause (a) or Clause (b) of Section 33(2) of the Act. Form K, which may be material for the point under consideration, is as follows :

"The workman discharged/dismissed under Clause (b) of Sub-section (2) of Section 33 has been paid wages for one month. The applicant prays that the conciliation officer may be pleased

to approve of the action taken, namely :

(Here mention the action taken under Clause (a) or Clause (b) of Sub-section (2) of Section 33)."

25. I may also state that the relevant rules relating to this matter framed by the Kerala State namely Rule 61 of the Kerala Industrial Disputes Rules, 1957 and the Form for an application u/s 33(2), namely, Form K prescribed herein, are almost identical with the corresponding rule framed by the Central Government and the Form prescribed by the Central Rules.

26. Before I proceed to deal with the various contentions that have been urged by all the learned counsel, I may state that the Supreme Court has adverted, in its recent decision reported in *The Lord Krishna Textile Mills Vs. Its Workmen*, to the problem of construction which may arise for decision u/s 33(2)(b) of the Act, which appears also to have been argued before the learned Judges at some length. The question posed is, in the words of their Lordships :

"When is the employer required to make an application under the proviso to Section 33(2)(b)? Two views are possible on this point."

The Supreme Court considers the two possible views, but ultimately their Lordships say, in the said decision, that they do not propose to express their decision on that point, having regard to the pleadings in that case.

27. It will be seen by the various amendments made to Section 33 of the Act that under the section as it, stood originally prior to the amendment by Act 48 of 1950 there was an absolute prohibition against the management taking any action to alter, to the prejudice of the workman concerned, during the pendency of any conciliation proceedings or proceedings before a Tribunal, the conditions of service applicable to such workmen immediately before the commencement of such proceedings. There was also an absolute prohibition regarding the powers of the management to take action by way of discharge, dismissal or punishing any workman during the pendency of such proceedings, save with the express permission in writing of the Conciliation Officer, Board or Tribunal. But there was an exception provided under which the management could take action by way of discharge, dismissal or otherwise for misconduct not connected with the dispute. Therefore, the absolute powers of the management at any rate, to take action for misconduct not connected with the dispute was recognised under the section as it originally stood.

28. But by the amendment introduced by Act 43 of 1950, this right given to the management was taken away even in respect of taking action for misconduct not connected with the dispute. u/s 33, as incorporated by Act 43 of 1950, there was an absolute prohibition placed against the powers of management to take action

during the pendency of conciliation proceedings or proceedings before a Tribunal, save with the express permission in writing of the Conciliation Officer, Board or Tribunal. This section made no difference between action taken for misconduct either connected with the dispute or not connected with the dispute. Under this section it will mean that when once an industrial dispute or conciliation proceeding is pending the management can take no action, except with the express permission in writing of the Tribunal whether the misconduct for which action is taken, is one connected with the dispute or not.

29. The present Section 33 is the result of the Amendment Act 36 of 1956. A perusal of the section as it now stands, will clearly show that it consists of three parts. The first part is contained in Sub-section (1) dealing with action taken during the pendency of any conciliation proceeding etc. in regard to any matter or for any misconduct connected with the dispute. In such cases, no action can be taken by the management, save with the express permission in writing of the authority concerned. The second part is contained in Sub-section (2) which deals with action taken, no doubt, during the pendency of any conciliation proceeding etc., but in accordance with the Standing Orders of the management and in regard to any matter or for any misconduct not connected with the dispute. So far as action taken under Clause (a) of Sub-section (2) is concerned, the powers of the management appear to be absolute. Clause (b) of Sub-section (2) provides for action being taken for any misconduct not connected with the dispute and the management discharging or punishing whether by dismissal or "otherwise the workman concerned. But under the proviso, there is some limitation imposed to the effect that in cases of discharge or dismissal, the workman should be paid wages for one month and an application also should be made by the employer to the appropriate authority for approval of the action taken by the employer. The question is, what exactly is the limitation sought to be imposed by this proviso on the powers of the management when taking action against a workman for any misconduct not connected with the dispute by discharging or dismissing him. The third part is contained in Sub-section (3) and that places an absolute prohibition regarding the taking of action during the pendency of any conciliation proceeding etc., against any protected workman. That sub-section recognises no exceptions and no action can be taken against such protected workman when once an industrial dispute is pending, save with the express permission in writing of the concerned authority. Sub-section (3) does not make any difference between the action taken regarding any matter connected with the dispute or action taken with regard to any matter not connected with the dispute. So far as the protected workman is concerned, there is a complete prohibition against the management from taking any action except with the express permission in writing of the authority.

30. As I will show presently by reference to certain decisions, opinion seems to be fairly unanimous that two views are possible regarding the construction to be placed on the proviso to Sub-section (2) of Section 33. Opinion also is unanimous that the wording of the proviso is not very happy and that there is an

apparent conflict between what is provided in the earlier part of the proviso and what is stated in the latter part of the said proviso. Therefore, the question arises whether it is proper to look into the statement of objects and reasons for enacting Sub-section (2) as it now stands.

31. As observed by the Supreme Court in *The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi*, , the statement of objects and reasons may be referred to :

""For the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which is sought to be remedied."

Again, in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, , with reference to statements of objects and reasons attached to a Bill, it is observed at page 622 by Mr. Justice Bhagwati as follows:

"There is a consensus of opinion that these are not aids to the construction of the terms of the Statute which have of course to be given their plain and grammatical meaning

It is only when the terms of the statute are ambiguous or vague that resort may be had to them for the purpose of arriving at the true intention of the Legislature."

I am referring to this aspect, because Mr. P.K. Kurian learned counsel for the petitioner, has referred to the statements of Objects and Reasons for enacting the Amendment Act 36 of 1956 whereby the present Section 33 was incorporated. According to the learned counsel, they will clearly show the true intention of the Legislature in enacting Section 33(2) of the Act and such a reference is absolutely useful because all are agreed that the proviso is ambiguous and vague.

32. In my view, having due regard to the observations of their Lordships of the Supreme Court extracted above and in view of the fact that the proviso is ambiguous and vague, resort can also be had to the statement of objects and reasons for the purposes of arriving at the true intention of the Legislature.

33. The statement of objects and reasons of the Bill for the Amendment Act 36 of 1956 in and by which the present Section 33, as it now stands, was incorporated, are as follows :

""The existing provisions of Section 33 of the Act prohibits during the pendency of any conciliation proceeding or proceeding before a Tribunal any change being made in the conditions of service of, or any action being taken against, the workmen concerned in the dispute except with the express written permission of the authority concerned. The number of applications for such permission is frequently large and their disposal takes time. Employers have complained that they are therefore prevented from taking action even in obvious cases of

misconduct and indiscipline unconnected with the dispute till long after the offence has been committed. It is proposed to alter the existing provisions so as to provide that, where during the pendency of proceedings" an employer finds it necessary to proceed against any workmen in regard to any matter unconnected with the dispute, he may do so in accordance with the Standing Orders applicable to the workman, but where the action taken involves discharge or dismissal he will have to pay the workman one month's wages and simultaneously file an application before the authority, before which the proceeding is pending, for the approval of the action taken. Protection on the lines of the existing provisions will continue to be available to all workmen in regard to any matter or misconduct connected with the dispute."

The statement of objects and reasons extracted above will indicate that the intention of the Legislature was that if an employer, during the pendency of proceeding, finds it necessary to proceed against any workman in regard to any matter unconnected with the dispute, he may do so in accordance with the Standing Order applicable to the workman; but where action taken involves discharge or dismissal, he will have to pay the workman one month's wages and simultaneously file an application before the authority before which the proceeding is taken for its approval of the action taken. Therefore, Mr. P.K. Kurian urged that the order of dismissal, payment of one month's wages and filing of an application before the authority concerned, can all be simultaneously done by the management as will be clear from the intention of the Legislature in the Statement of Objects and Reasons.

34. No doubt, Mr. P.K. Kurian did not rest his contention only on the Statement of Objects and Reasons, as I will show in due course, when dealing with his further contention.

35. According to Mr. P.K. Kurian, learned counsel for the petitioner, the history of legislation regarding Section 38 will clearly show that the trend of legislation was to give some freedom to employers for taking action regarding any matter or misconduct not connected with the dispute. No doubt, even in regard to such matters the legislature intended that the tribunal or other appropriate authority, before whom an industrial dispute is pending, should have an opportunity of scrutinising the action taken by an employer especially when there was an order of discharge or dismissal. The Tribunal can scrutinise the action of the employer and if it accords the approval, it will mean that the management has been able to satisfy prima facie the tribunal regarding the justification of their action. Notwithstanding that approval, it will still be open to the workman concerned, to raise an industrial dispute regarding the actual order passed by way of discharge or dismissal. If ultimately the tribunal does not give its approval, the workman does not suffer any prejudice, because the action of the management will have no force and the workman will get all the benefit of his back-wages etc., and if the management has not been able to make out a prima facie case even for approval, there will be an end of the matter and it will be impossible for the

management to raise any further dispute regarding the same.

36. The learned counsel quite naturally placed considerable emphasis on the expression used in the latter part of the proviso namely,

"for approval of the action taken by the employer,"

The learned counsel also relied upon the same expressions used in Sub-section (5) of Section 33 wherein it is provided that when an application is made to the appropriate authority, under the proviso to Sub-section (2)

"for approval of the action taken by him", the authority is to hear such application without delay and also pass such order, as expeditiously as possible. The expression "approval of action taken by the employer" according to Mr. P.K. Kurian, really contemplates that an action has already been taken by the employer; also there is no question of "approval". That expression suggests that what has to be approved has already taken place and it is in the nature of ratification of what has already happened or taken place. In this connection, the learned counsel referred to Black's Law Dictionary, 4th Edition wherein "Approval" is stated to be :

"The act of confirming, ratifying, sanctioning or consulting to some act or thing done by another", and "Approve""

"To be satisfied with; to confirm; ratify, sanction, or consent to some act or thing done by another; to sanction officially; to ratify; to confirm; to pronounce good; think or judge well of; admit the propriety or excellence of; be pleased with."

37. The learned counsel further urged that in Sub-sections (1) and (3) of Section 33, the expression used is ""with the express permission in writing" which will indicate that no action can be taken without the express permission in writing having been granted by the Tribunal or other authority; whereas in Sub-section (2) the use of the words "approval" and "of action taken" clearly indicates that the order of discharge or dismissal has been already passed by the management and what is asked for is a ratification or confirmation, at the hands of the Tribunal, of action which has already been taken by the employer. This interpretation, according to the learned counsel, finds support by the expression used in Sub-section (5) of Section 33 of the Act which again deals with application ""for approval of the action taken by the employer."

38. The learned counsel also urged that the expression used in the proviso in Section 33(2) is "unless" which according to him, cannot mean what the expression "until" will convey. Again Mr. P.K. Kurian referred me to Black's Law Dictionary, 4th Edition regarding the meaning of the two expressions "unless"" and "until".

"UNLESS" is stated to be ;

"if it be not that, if it be not the case that, if not, supposing not, if it be not, except'"" and

"UNTIL"

"Up to time of. A word of limitation, used ordinarily to restrict that which precedes to what immediately follows it, and its office is to fix some point of time or some event upon the arrival or occurrence of which what precedes will cease to exist."

39. Based upon the definition of the expression "unless" the learned counsel urged that the proviso can be very naturally construed to mean that a workman shall not be discharged or dismissed except by payment of one month's wages and an application being made by the employer for approval to the authority concerned.

40. The learned counsel further urged that Section 31(1) imposes a very heavy penalty on the employer for contravention of the provisions of Section 33 of the Act. When that is so, the learned counsel urged that if the legislature intended certain matters to be fulfilled as a condition precedent to taking action, the Legislature would not have left the matter in doubt and would have expressed itself in clear and unambiguous terms to that effect. In this connection, the learned counsel relied upon the provisions of Section 25-F of the Act where the title to the section itself is "Conditions precedent to retrenchment of workmen" and apart from this heading, the section also uses the expression "until". Chapter V-A dealing with lay-off and retrenchment in which Section 25-F finds a place, was introduced by the Amending Act 43 of 1953. The Legislature, when it incorporated Section 33, as it now stands by Act 36 of 1959, must have been fully aware of the expressions used in Section 25-F when it wanted certain matters prescribed by it to be treated as condition precedent before taking action by the management. But there is no such indication, according to the learned counsel, in Section 33(2) of the Act that the Legislature wanted the payment of wages for one month and an application being made to the appropriate authority as conditions precedent to the exercise of powers by the management by way of discharge or dismissal. The expression "until" occurring in Section 25-F has been held by the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , as indicating a condition precedent whereas the expression in Section 33 is not "until" but "unless" which has got a different meaning altogether.

41. The learned counsel also urged that importance should be given to the rules framed by the appropriate Government as well as the form prescribed for making an application u/s 33(2) of the Act. The rule and the form which have been extracted above, according to the learned counsel, will clearly show that the Legislature itself understands the section to mean that action by way of discharge or dismissal has been already taken. Though the rules or the forms will not by themselves control the clear provisions of the statute, nevertheless if the statute is ambiguous or is not clear, the learned counsel contended that the matters provided in the rules and the form can be taken into account to arrive at the true meaning of the proviso in question. Quite naturally, the learned counsel urged

that the rules framed either by the Central Government or by the State Government have to be laid before the appropriate Legislature as is mandatory u/s 32 (4).

42 The learned counsel further urged that if the expression "unless he has been paid wages for one month" is strictly construed and is treated as a condition precedent, it will become impossible of performance, when a workman refuses to receive the wages. The natural interpretation, must be that along with the order of dismissal, the management must have made everything in its power to make available, to the workman concerned the wages for one month. Further, the learned counsel urged that the question of payment of wages for one month can and will arise only when a decision has been taken by the employer by way of discharging or dismissing the workman concerned. That payment of one month's wages is to soften the rigour of unemployment that will be facing a workman, immediately, on his being discharged or dismissed from service. There is no purpose, in making a payment of wages for one month in respect of an action that is proposed to be taken in future. Therefore, the proviso must be construed in such a way that it will safeguard the interests of the workman concerned and also recognise the right of an employer to take action under particular circumstances. The interest of the workman is amply safeguarded according to Mr. P.K. Kurian, by the actual payment or making available to him wages for one month and also placing the action taken by the management before the Tribunal for its scrutiny and approval. The right of the employer to take immediate action, in cases of misconduct, not connected with the dispute is also recognised because the absolute prohibition which existed u/s 33 as it stood prior to the amendment by Act 36 of 1950 has also been considerably relaxed. Therefore, the learned counsel finally urged that to construe the proviso in the manner urged by him will not be doing violence to either the scheme of Section 33 or the various matters mentioned therein.

43 On the other hand, Mr. K. G. Devarajan, learned counsel for the workman concerned, urged that Section 33 of the Act as it originally stood prior to the amendment by Act 43 of 1950, gave absolute powers to the employer to take action by way of discharge or dismissal in cases of misconduct not connected with the department. But that right was withdrawn by the Legislature when it incorporated the new Section 33 by (the Act 43 of 1950. By the said Act no exception was recognised and no distinction was made between action being taken for misconduct either connected with the industrial dispute or not. There was a complete prohibition against any action being taken by the employer, save with the express written permission if the officer, Board or Tribunal concerned. The learned counsel further urged that Section 33 as it now stands, will also clearly show that it was not the intention of the legislature to give complete freedom to the management even in cases of action being taken for misconduct not connected with the industrial dispute. The Legislature's intention was clearly to safeguard the rights of workmen by placing restrictions upon the arbitrary action that may be taken by the management. The Legislature intended that the

management must intimate beforehand its proposed action by discharge Or dismissal, so that the Tribunal may be seized of the matter, before the order actually takes effect and in this view has imposed two conditions precedent in the proviso to Section 33(2) namely, of payment of one month's wages and an application being made to the authority concerned.

44 I understood Mr. K. G. Devarajan to take up the position that it was open to the management to decide to dismiss or discharge the workman at a further date find then pay one month's salary and make an application to the Tribunal for approval.

45 The learned counsel urged that the expression "unless" occurring in the proviso to Section 33(2) has the same meaning as the expression "until" used in Section 25-F of the Act. When the expression "until" has been construed as constituting a condition precedent by the Supreme Court the expression "unless" having the same meaning must also bear that meaning in Section 33(2) also.

46 The learned counsel further placed considerable reliance upon Section 33(5) of the Act wherein it is provided that when an application is made by an employer to the authority concerned, under the proviso to Sub-section (2) for approval of the action taken by him, the authority shall without delay, hear such application and pass as expeditiously as possible, such order in relation thereto as it deems fit. This, according to the learned counsel, clearly indicates the intention of the Legislature when an employer has applied to the authority concerned for approval regarding his proposed action of dismissal or discharge, that matter will have to be decided expeditiously as it involves the fate of the workman concerned.

47. Mr. K. G. Devarajan also relied upon Section 33-A of the Act, wherein a right is given to the employee to make a complaint alleging that an employer has contravened the provisions of Section 33. If making of an application to the authority for approval is not a condition precedent under the proviso to Section 33(2), it will be open to the employer to urge before the authority in proceedings u/s 33-A that he is making an application for approval inasmuch as there is no time-limit fixed under the statute for making of such an application.

48. The learned counsel urged that having due regard to the scheme of the statute, the expressions used in the proviso namely, "he has been paid wages for one month" and "an application has been made by the employer to the authority" must bear their natural and ordinary meaning namely, that those things must have been done before the employer dismisses or discharges the workman concerned.

49. This line of argument has also been adopted more or less by the learned Government Pleader. The learned Government Pleader also urged that the object of Section 33 is to impose a ban upon the exercise of powers by the management and that purpose will be defeated if the employer is allowed to take action by way of discharge, or dismissal of the workman, unless he has satisfied

the two conditions prescribed in the proviso to Section 33(2). The learned Government Pleader urged that the expression "until" and "unless" have the same meaning. In this connection, the learned Government Pleader referred me to the decision of the Supreme Court in Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , where their Lordships had to consider the scope of Section 34 of the Indian Income Tax Act. No doubt, the expression "unless" occurs in the proviso to Section 34(1) of the Income Tax Act. Having regard to the general scheme of that section, their Lordships held that to confer jurisdiction under the said section on the Officer, to issue notice, two conditions have to be satisfied and those two conditions are conditions precedent to be satisfied before the Income Tax Officer could have jurisdiction to issue a notice. I may straightway say that the learned Judges were considering a particular section of the Income Tax Act where there was no ambiguity, according to the learned Judges, certain conditions mentioned therein are conditions precedent. I do not think this decision is of any assistance to the learned Government Pleader. Ultimately, the learned Government Pleader urged for the acceptance of the views expressed by the learned Judges of the Bombay High Court.

50. Both the learned Government Pleader and Mr. K. G. Devarajan attempted to rely upon certain observations contained in The Lord Krishna Textile Mills Vs. Its Workmen, , as supporting their contention that the payment of one month's wages and an application being made to the authority concerned, under the proviso in question, are conditions precedent to action being taken for dismissal or discharge. I cannot certainly accept this contention of the learned counsel, because as I have already mentioned, in the latter part of the said judgment. Their Lordships pose the question :

"When is the employer required to make an application under the proviso to Section 33(2)(b)? Two views are possible on this point."

After considering the various aspects that could be presented regarding the two possible views, their Lordships finally say that they do not propose to express their decision on this point. When that is so, in my opinion, no support can be attempted to be drawn by either the learned Government Pleader or by Mr. K. G. Devarajan by referring to any observations that the learned Judges have made in the earlier part of the judgment, when considering the scope of the powers of a tribunal in considering an application for approval u/s 33(2)(b) of the Act. Therefore, I do not think it necessary to refer to the particular observations relied upon by both the learned counsel in that judgment.

51. Mr. V. Bhaskaran Nambiar, whom I permitted to intervene, took up a slightly different stand. Apart from generally supporting the stand taken by Mr. K. G. Devarajan and the learned Government Pleader and urging for acceptance of the judgment of the Bombay High Court, the learned counsel urged that it was open to the management to take a decision for discharging or dismissing an employee and then pay him one month's wages and apply to the authority for approval

and immediately take action by way of actual dismissal or discharge without waiting for the actual approval being granted by the Tribunal Or authority concerned.

52. It is now the convenient stage to consider 3 decisions which have a bearing on this matter namely, a decision of the Bombay High Court in Premier Automobiles Ltd. Vs. Ramachandra Bhimayya Polkam, ; the decision of the Gujarat High Court in Indian Extractions (Private) Ltd. Vs. Vyas (A.V.) and Another, ; and of the Rajasthan High Court in 1959 2 Lab LJ 810.

53. No doubt, the judgment, earlier in point of time is that of the Rajasthan High Court, but I would consider that decision later, after adverting to the decisions of the Bombay and Gujarat High Courts. According to the learned Judges of the Bombay High Court in AIR 1960 Bom 690, (Chainani, C. J. and Desai, J.) the Legislature intended to make a safeguard in favour of the employee under the proviso to Section 33(2). The expression ""unless" is indicative of an intention of making what follows as conditions precedent; and the expression "has been made" indicates that the application must be made before dismissal or discharge takes place. But the learned Judges also realise the difficulty when the expressions used in the latter part of the proviso namely, "for approval of the action taken by the employer"" is considered. According to the learned Judges, these words clearly imply that action must precede approval. It is also the view of the learned Judges that the two party of the proviso appear to be in conflict and therefore, a harmonious construction will have to be placed On the proviso. The learned Judges are also recognising the fact that the two views placed before them are possible. But the learned Judges are of the opinion that the better view is to treat the payment of one month's wages and the making of an application for approval, as conditions precedent to making an order of discharge or dismissal.

54. In arriving at this conclusion, the learned Judges appear to be considerably impressed by the circumstance that there in no time-limit fixed in the statute within which an employer is to make an application for approval. They also advert to the fact that when an employee files a complaint u/s 33-A of the Act, the employer can very well defend that action by immediately filing an application for approval or by taking up the position that as there is no time-limit fixed, he can make an application at any time. Under those circumstances it is the view of the learned Judges, the Tribunal will have to embark upon an inquiry as to whether an employer has filed an application within a reasonable time and such an inquiry is certainly not contemplated by the statute. Therefore, the learned Judges are prepared to construe the words "action taken" as "action proposed to be taken". The learned Judges are not inclined to attach much importance to the rules framed under the Act or the form prescribed for making an application for approval. The learned Judges ultimately are of the view :

""All that is required of him is that he must make an application for approval to the authority concerned before he passed the order of dismissal or discharge. It

would therefore be not correct to infer from the use of the word "Approval" in Sub-section (2) that the Legislature intended that the application under this sub-section should be made after action has been taken."

It will be noted that the learned Judges do not refer to the provisions contained in Section 25-F of the Act and the learned Judges are not also inclined to give importance to the statutory rules made under the Act. The learned Judges have not also, if I may say so with respect, considered the question as to the necessity of paying one month's wages, if an employer has not actually taken action by way of dismissal or discharge.

55 The same question arose before the Gujarat High Court (Desai, C. J. and Bhagwati, J.) in the decision reported in *Indian Extractions (Private) Ltd. Vs. Vyas (A.V.) and Another*, . It will be seen that the correctness of the decision of the Bombay High Court in *Premier Automobiles Ltd. Vs. Ramachandra Bhimayya Polkam*, , was challenged before the learned Judges. In particular, it was also pressed before the learned Judges that the Bombay High Court erred in not giving due importance to the statutory rules framed by the Central Government and the form prescribed for making an application for approval u/s 33(2)(b) of the Act.

After adverting to the various aspects presented before them, the learned Chief Justice, delivering the judgment on behalf of the Bench, observed at page 24 :

"There can be no doubt that Rule 60 and the material part of Form K, which we have quoted above proceed on an interpretation of Section 33(2) for which Mr. Parekh contends.

The argument on behalf of the petitioners ran that rules made by the Central Government were laid before both Houses of Parliament and we must attach fullest importance to rule 60 and the language of Form K while interpreting Section 33(2). It will be necessary to advert to this argument a little later in our judgment.

Were the matter *res integra*, we should have found some difficulty in negating the argument canvassed before us by Mr. Parekh. But this question of construction of Section 33(2) must, however, be regarded, so far as this Court is concerned, as concluded by authority.

56 Mr. Parekh, it must be mentioned, was urging before the learned Judges in that case, that it is open to an employer to take action by way of dismissal or discharge and then make an application for approval to the appropriate authority. The "authority" referred to by the learned Chief Justice in the observation extracted above, is the decision of the Bombay High Court in *Premier Automobiles Ltd. Vs. Ramachandra Bhimayya Polkam*, .

57. It is the view of the learned Judges of the Gujarat High Court, that they are bound to follow the decision of the Bombay High Court, unless the decision of the Bombay High Court is "a judgment delivered *per incuriam*" in which case, it will

be binding on a court of co-ordinate jurisdiction. No doubt, there was an attempt by the counsel in that case to persuade the learned Judges to take the view that the decision of the Bombay High Court should be treated by the Gujarat High Court as "per incuriam". Ultimately, the learned Judges, while accepting the position that Sub-section (5) of Section 33 will furnish intrinsic evidence for interpreting Section 33(2) and while also accepting the position that Section 33(2) is not happily worded, are of the view that these considerations, by themselves, are not sufficient to enable them to treat the Bombay decision as delivered "per incuriam". Finally, the learned Judges follow the Bombay decision by observing ;

"Therefore, whatever view we might have taken of the case before us, were the matter *res integra*, we are bound to follow that decision."

Though the learned Judges of the Gujarat High Court felt bound by the decision of the Bombay High Court, the various observations contained in the said judgment, in my view, and if I may say so with respect, gives an indication that the Gujarat High Court, if it felt free to decide the matter, was not prepared to adopt the reasoning of the Bombay High Court. But whatever it is, the result, ultimately is, that no decision on the merits, as such has been given by the learned Judges of the Gujarat High Court.

58. The only other decision that has to be noted is the decision of the Rajasthan High Court in 1959 2 Lab LJ 810. There is a slight difference in the approach made by the two learned Judges constituting the Division Bench (Modi and Bhandari, JJ.); but it will be seen that both the learned Judges are of the view that the payment of one month's wages and making of an application are not conditions precedent for taking action by way of discharge or dismissal.

59. Mr. Justice Bhandari, if I may say so with respect, adopts a *via media*, and holds that an order for dismissing a workman from a later date may be made and one month's wages given and an application can be made simultaneously for approval. On the other hand, Mr. Justice Modi, the other learned Judge was not prepared to adopt the approach made by his learned brother. In fact, it is the view of Mr. Justice Modi as observed by the learned Judge, at page 822.

"Cases are easily conceivable where an employer may dismiss an employee for misconduct unconnected with a pending industrial dispute and at once offer the payment of a month's wages to him and further simultaneously make an application to the tribunal for the approval of the action taken by them. I can see nothing in the language of Section 33(2) including its proviso to make such a course of conduct on the part of the employers illegal. On the other hand, it clearly seems to me that such an order, if passed, would be unexceptionable."

It is also the view of the learned Judge that the approval is clearly an *ex post facto* requirement and there is nothing in the sub-section or the proviso which makes it incumbent on the employer that he must withhold the effect of the dismissal or discharge whereof approval is sought, until an application therefore

has been made.

60. Both the learned Judges have agreed that in disposing of an application for approval u/s 33(5) of the Act, the Tribunal should only consider whether the employer has made out a prima facie case for approval and that it should not embark upon an inquiry as to whether the application made is proper or not. According to the learned Judges, that question will arise only when a complaint is filed by the workman concerned, u/s 33-A of the Act.

61. After a consideration of the various aspects presented before me by the learned counsel appearing for all parties, and after having given due consideration to the views expressed by the Bombay, Gujarat and Rajasthan High Courts in this matter, I am of the view that the contentions of Mr. P.K. Kurian, learned counsel for the writ petitioner, have to be accepted. With great respect I am not inclined to adopt the reasoning of the Bombay High Court referred to above *Premier Automobiles Ltd. Vs. Ramachandra Bhimayya Polkam*, . I am also, with great respect, not prepared to adopt the *via media* suggested by Mr. Justice Bhandari in 1959 2 Lab LJ 810 (Modi and Bhandari, JJ.), With respect, I am in entire agreement with the views expressed by Mr. Justice Modi in 1959 2 Lab LJ 810 (Modi and Bhandari, JJ.)

62. So far as I could see, the provisions of

Section 25-F of the Act, wherein certain matters are directed to be complied with, as condition precedent to action being taken by the employer, have not been considered in these decisions. Further, the difference, if any, between the two expressions namely ""until" used in Section 25-F and "unless" used in Section 33(2)(b) proviso, have not been adverted to. The further question as to the necessity for the payment of One month's wages, unless a decision has been actually taken by the employer, has also not been, as such, adverted to in these decisions.

63. At this stage, I may mention that Mr. P.K. Kurian raised also a minor contention that the question of the legality or otherwise of the application filed for approval, does not arise when the tribunal disposes of the application for approval u/s 33(5) and that the proper stage for going into that matter if at all, will be in the complaint that has been filed by the workman u/s 33-A and in ?his case, such a complaint has been made and is also actually pending as I. D. 96/59. I am not inclined to accept this contention of the learned counsel, because according to the decision of the Supreme Court in *The Lord Krishna Textile Mills Vs. Its Workmen*, , all that the authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) proviso, are satisfied or not namely,

1. "Do the Standing Orders justify the order of dismissal?
2. Has an inquiry been held as provided by the Standing Order?
3. Have the wages for the month been paid as required by the proviso? and

4. Has an application been made as prescribed by the proviso?"

It will be seen "that of the 4 matters, which have to be considered by the appropriate authority, one of the points is as to whether an application has been made as prescribed by the proviso. If that is so, I fail to see why the Tribunal, when considering an application for approval u/s 33(5) has no jurisdiction to consider as to whether the application has been made as prescribed by the proviso. The incidental question will also then arise as to whether an application filed, after discharging or dismissing a workman, is an application "as prescribed by the proviso."

64. I am inclined to accept the contention of Mr. P. K. Kurian that the expression "unless" occurring in the proviso to Section 33(2) of the Act, should not be given the same meaning as the expression "until" occurring in Section 25-F of the Act, The Legislature was fully aware, when Section 33 was being substituted in 1956, about the matter therein to denote conditions precedent. In fact, Section 25-F deals with "conditions precedent" to retrenchment of workmen. We do not have any such indication in Section 33(2) of the Act. A more harmonious reading of the proviso, in my view, is to interpret it in such a manner and hold that it is open to the employer to take action by way of dismissal or discharge and pay wages for one month and also simultaneously file an application before the appropriate authority for approval of the action taken. The expression "has been paid wages", if construed very strictly, that it should have been paid as a fact, will lead to an anomalous situation. A workman may refuse to take the wages and in such a case, it will be impossible for the employer to satisfy that condition, if that has to be considered as a condition precedent. On the other hand, the more natural interpretation to be placed is that the employer must have made available to the workman wages for one month. That making available or making actual payment of wages for one month, in my view, will not and cannot arise, unless the employer has already passed an Order discharging or dismissing a workman. The expression that is used is "approval", and I have already indicated, with a reference to Black's Law Dictionary as, meaning that it is in the nature of a ratification of what has already happened or taken place.

65. In my view, there is also intrinsic evidence furnished by Section 33(5) itself to show that the authority concerned is considering the grant or refusal of approval, of the action taken by the employer and that "action taken can only be an order of dismissal or discharge passed by the employer. Again if an employer is to be faced with such serious consequence as mentioned in Section 31(1) of the Act, one would have expected the Legislature to have provided in clear and unambiguous words as to whether the matters provided in the proviso to Section 33(2) are conditions precedent to taking action by way of discharge or dismissal. When visiting an employer with such a penal and drastic action, as contemplated in Section 31(1), the Legislature would not have left matters in such doubt or ambiguity.

66. There is also the indication given by the statute in Section 25 (F) when it

wanted certain matters to be treated as conditions precedent. That expression ""until" Occurring in Section 25-F has been considered by the Supreme Court as constituting conditions precedent; and in the absence of any such clear indication in Section 33(2)(b), in my view, it will be placing a very unreasonable interpretation on the proviso to Section 33(2) by holding that the payment of wages for one month and the filing of an application before the Tribunal or authority are conditions precedent.

67. There is also the intention of the Legislature expressed in its Objects and Reasons for enacting Section 33 as it now stands. The object was to recognize some power in the management to take action in cases of misconduct not connected with the dispute. No doubt, even Mr. Kurian has not taken up the position that the employer is absolutely free from all limitations. On the other hand, he has only urged that scrutiny of the action taken by the management is to be after the management has taken action by way of dismissal or discharge.

68. No doubt, some reliance was sought to be placed upon the provisions contained in Sub-section (5) of Section 33 by the learned counsel for the respondent on the ground that there is an indication by the Legislature, that there is a proposal by the employer to punish the workman by dismissal or discharge and therefore, those applications must be disposed of without delay and as expeditiously as possible. I am not inclined to accept this contention. Sub-section (5) of Section 33 is quite consistent, even with the interpretation that I am inclined to place upon the proviso to Section 33(2) that the Legislature desires that when an employer has taken action by way of dismissal or discharge and he has filed an application for approval, the authority must consider the grant of approval or otherwise as early as possible so that the workman may know as to whether he has to seek employment elsewhere or not.

69. Even otherwise, there is a general provision in Section 15 of the Act, which is to the effect that all proceedings must be conducted by the authorities concerned as expeditiously as possible.

70. AS pointed out by the Supreme Court in *The Lord Krishna Textile Mills Vs. Its Workmen*, , the provisions of Section 33(5) bring out the legislative intention that though an express permission in writing is not required, in cases falling under the proviso to Section 32(2)(b), it is desirable that there should not be any time lag between the action taken by the employer and the order passed by the appropriate authority, in the inquiry under the said proviso. The further reasoning of the learned Judges in the said decision, also indicates that the ban imposed by Section 33(1), and the provision for "approval" u/s 33(2) is not without significance and it clearly shows that the Legislature has made a deliberate departure in cases coming under the two sub-sections.

71. The statutory rules, and the form prescribed for making an application for approval u/s 33(2) of the Act, may not by themselves, control the words occurring in a particular section, if the section is clear and unambiguous.

Nevertheless, those statutory rules and the form can be referred to for assistance in the matter of construction when the language in the statute is difficult to construe and is ambiguous, in order to ascertain the true intention of the Legislature --Craines, on Statute Laws, 5th Edition, page 148. If that is so in the present case, the form K, already referred to by me, clearly shows that the Legislature intended the employer to make an application u/s 33(2) for approval, after he has already passed an order, by way of dismissal or discharge. In fact, the learned Judges of the Gujarat High Court also, in the decision already referred to, were prepared to place considerable importance to the relevant rule and form as a guide for interpreting the proviso to Section 33(2).

72. The argument advanced on behalf of the respondents that an application filed u/s 33A by the workman can be effectively scuttled by an employer applying for approval after the employee files an application does not at all appeal to me. Section 33-A refers to a violation of the entire Section 33, which takes in all the sub-sections containing therein. In particular Section 33(2) also deals with payment of one month's wages. In my view, it is open to the employer to take action by way of discharge or dismissal and immediately either pay or if it is not accepted, make available to the workman concerned one month's wages and simultaneously, within a reasonable time, apply to the appropriate authority concerned for approval. One can very well leave masters as to whether an employer has filed an application within a reasonable time, for consideration by the tribunal. Certainly, it will not be open to the employer to offer to pay wages, after a workman has filed an application u/s 33-A, because the employer immediately after passing an order of discharge, is bound to pay and the contention based upon Section 33-A does not at all, in my view have any relevancy, in the construction to be placed on the proviso to Section 33(2).

73. For all these reasons and the other reasons given by Mr. Justice Modi on this aspect, in 1959 2 Lab LJ 810, with whose views I respectfully agree, I have to hold that the order of the Industrial Tribunal, Kozhikode, dismissing the application, on the sole ground that it is not maintainable, as it has not been filed by the management before the order of dismissal, is erroneous and as such, the order of dismissal is set aside. The Tribunal has already held in favour of the management, that the latter has made out a prima facie case for the grant of approval, and with those reasons I have already expressed my concurrence; and therefore no further investigation on these masters is required. The Tribunal has dismissed the application only on the legal ground mentioned above. Therefore M. P. 303/59 will be sent back for the limited purpose of being taken up by the Tribunal for granting approval, u/s 33(5) of the Act. The writ petition is allowed. As there is divergence of judicial opinion on this matter, I direct the parties to bear their own costs in these proceedings.