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**(1984) 08 PAT CK 0048**

**In the Patna High Court**

**Case No :** Civil writ jurisdiction Case No. 3188 of 1979

Ram Bachan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 31-08-1984

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 2(a), 33, 33A, 33C

**Citation :** (1985) PLJR 331

**Hon'ble Judges :** N.P. Singh, J;M.P. Varma, J

**Bench :** Division Bench

**Advocate :** D.N. Pandey, for the Appellant; R.P. Katriar and S.K. Katriar, for the Respondent

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## **Judgement**

M.P. Varma, J.—A short point involved for a decision in this application is whether on the facts of the case Section 33A of the Industrial Disputes Act, 1947. (hereinafter referred to as "the Act") is attracted which confers jurisdiction on a Labour Court or Tribunal to adjudicate and grant consequential relief of re-instatement/payment of compensation like a back wages or such other benefits during the pendency of the proceedings referred to u/s 10 of the Act. Facts giving rise to this application are as follows. The petitioner was in the employment of Rohtas Industries Ltd., Dalmianagar (respondent No. 2). The service-conditions of the employees in this management is governed by the Rohtas Industries Ltd. Standing Order framed under the Industrial Employment (Standing Order) Act, 1946 (hereinafter referred to as "the Standing Order"). The Standing Order contains a clause that every workman retires on attaining the age of sixty years. Accordingly respondent No. 2, the management served a notice on the petitioner on 27.8.73, whereby he was asked to retire on 2.11.1973 as he would attain the age of sixty years on that date.

2. The petitioner disputed the correctness of the entry recorded in the service-book with regard to his date of birth, and according to him, he did not reach the age of superannuation on 2.11.1973. His claim was that his date of birth being

2.1.1920, he would retire on 2.1.1980 and that the notice intimating of his retirement was quite unjust. The petitioner individually and also collectively through "Karamchari Singh" raised his grievance and the Conciliation machinery of the Government of Bihar having failed to resolve dispute made a reference u/s 10 of the Act to the Labour Court under notification No. III/DI-16026/73 L & E 3564 dated 23rd October, 1973 for adjudication which was registered as Reference case No. 16 of 1973. Incidentally it may also "be noted Sat all the workmen including the petitioner made representation for revision of their wages and this was also referred to the Industrial Tribunal to examine if the wage-structure of the workman be revised, being Reference case No. 60 of 1969. The petitioner has pleaded that this second reference was a co-ordinate issue with the earlier one related to his service conditions, although correctly speaking, we are not concerned with the Reference case No. 60 of 1969 for deciding the issue, raised in this application.

3. The petitioner has submitted that while the aforesaid. Reference case No. 16/73 was pending adjudications the petitioner was served with another notice, vide annexure "2" dated 27.8.1973 by which he was made to retire on 28.11.1973. The notice issued was a sort of Victimisation to him and it amounted, to making a change in the service conditions by way of asking him to retire before attaining the age of 60 years in violation of the Rohtas Industries Ltd. Standing Order.

4. So far Reference case No. 16/73 was concerned, it was decided in favour of the petitioner. The Labour court gave its award dated 9.10.1976 (vide annexure "B" to the counter affidavit, filed by the respondent No. 2). It was held therein that the petitioner's date of birth was 2-1.1920 and so, he did not reach the age of superannuation.

5. In the present writ application the petitioner has made out a case that it was before the pendency of the reference proceeding that he was forced to retire on the basis of f notice (annexure 2) as referred to above. It is also asserted that such a notice, in fact, affected and caused a change in the service condition prejudicial to the interest of the petitioner, which right the respondent No. 2 did not have and the notice was in contravention of the provisions of section 33 of the Act.

6. The petitioner therefore, sought protection against the alleged victimisation and filed a complaint u/s 33 of the Act on 17.1.1975 to the Presiding Officer of the labour Court for necessary action. The complaint was registered as a Miscellaneous case No. 2 of 1975.

7. The Labour Court by his order, dated 17.7.1979 (the impugned order) held that the proceeding (Misc. case No. 2/75) was not maintainable, as it did not attract the provisions of section 33A of the Act. The court further held that at best, it was a claim for recovery of money due, if any, from an employer (respondent No. 2), for which the petitioner might agitate his claim u/s 33C of

the Act. A copy of that order of the Labour Court has been attached to the application as annexure "6". The petitioner has challenged its validity and has prayed for quashing of the same. Further relief has been sought to direct the Labour Court judge, i.e. respondent No. 3 to hear the complaint of the petitioner filed u/s 33A for alleged contravention of the provisions laid down u/s 33 of the Act.

8. It cannot be disputed that in a case of contravention by an employer relating to the provisions of section 33 of the Act during the pendency of the proceeding, an aggrieved employee may make a complaint writing for action.

9. A counter affidavit has been filed on behalf of respondent No. 2, the manager of Rohtas Industries Ltd. Dalmianagar. The employer respondent has said that the petitioner was not a workman concerned as defined u/s 2(a) of the, Act and within the meaning of section 33 of the Act, inasmuch as the order in question (vide annexure "2") for his retirement was passed on 27.8.1973. i.e. prior to the reference notification dated 23.10.1973, which form subject matter of adjudication in reference case No. 16/73, inter alia it has also been stated that the retirement on account of superannuation reaching the age of sixty years, as per Standing Order, does not amount to any alteration or change in the conditions of service. The petitioner is therefore, not competent to maintain his cause for any relief under the Act.

10. Section 33 of the Act is as follows:

Conditions of service etc. to is main unchanged under certain circumstances during the pendency of proceeding (1) during the pendency of any conciliation proceeding before, an arbitrator or a conciliation officer or a Board of any proceeding before a 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 a dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge, or punish, whether by dismissal or otherwise, any workman concern in such dispute.

Save with express terms in writing of the authority before which the proceeding is pending.

11. Thus, on reading the section quoted above, I find that the saving clause appended thereto does not prohibit the employer in taking action against his employees but the only limitation imposed against the management employer is that the management may do so with express permission of the Tribunal or the Labour Court where the proceeding is pending. In other words, any such action of the employer which might be detrimental to the interest of an employee, is subject to the scrutiny of the Labour court. The intent behind the Section is to safeguard and to protect the interest of a workman concerned in a proceeding

under industrial dispute. It decidedly prohibits the employer, during the pendency of the dispute, to bring any change in the conditions of service as such action would bring about fresh disputes and may aggravate the relation between them. But in case the employer transgresses the limitation circumscribed u/s 33, the employee may invoke his right for action u/s 33A by lodging a written complaint to the authority concerned, where the proceeding is pending. Section 35A of the Act may profitably be quoted as follows. This reads as follows:

33 A. Special provisions for adjudication as to whether conditions of service etc. changed during the pendency of proceeding--

Where an employer contravenes the provisions of section 33 during the pendency of the proceeding before a Conciliation Officer, Board, an Arbitrator, a Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing in prescribed manner:

(a) to such Conciliation Officer or Board, and the Conciliation Officer or the Board shall take such complaint into account in mediating in and promoting the settlement of such industrial dispute; and

(b) to such arbitrator, labour court, tribunal and National Tribunal and on receipt of such complaint, the arbitrator, Labour court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were dispute referred to are pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provision of this Act shall apply accordingly.

12. A plain reading of the provisions aforesaid indicate that the complainant under this section must be a workman first, and secondly, he must be the person aggrieved, i.e. he should be directly concerned with the dispute pending in the proceeding, and thirdly for maintaining a cause of action Under this head he must allege and show contravention of the terms of section 33A of the Act. This section, in substance is a provision penal in form and action under it can be resorted to on a complaint for the wrong done to the complainant. In answer to the question referred to and noted above whether action u/s 33A of the Act is attracted I say, if there is no contravention of the provisions as laid down u/s 33, no award can be given u/s 33A of the Act.

13. Testing the case of the petitioner on this anvil of section 33A of the Act, I find that the order in annexure "2" served on the, petitioner was passed much before the date of reference of the dispute to the Labour court. The order was passed on 27.8.1973, whereas the Government of Bihar in the Department of Labour, made the reference to the Labour court on 23.10.73. A simple scrutiny, therefore discloses that there was no pending dispute when the order in question was passed and as such no right accrued to the petitioner to come up before, the Labour court u/s 33A of the Act.

14. The learned Counsel for the petitioner Sri D.N. Pandey has contended that

though the notice in question vide annexure "2" was passed on 27th August, 1973; it was made effective on and from 28.11.1973 when the Reference proceeding No. 16/73 was pending before the Labour Court. In other words, the learned Advocate contended that the notice in terms amounted to a change in the service conditions as it was made effective during the pendency of the proceeding before the Labour Court. Admittedly the order was made before the reference of the dispute. The order was communicated to the petitioner prior to the reference. It may have its effect, when the reference was pending. It was passed prior to the reference and not at time when the proceeding was pending before the Labour Court and this, in the eye of law, the petitioner could not have asked for an award or any action u/s 33A of the Act. The application filed before the Labour Court was ill advised and the court rightly held that he was not entitled to any relief u/s 33A of the Act. Thus, in conclusion, I say that I do not find any merit in the case of the petitioner. The application, therefore, must fail and it is accordingly dismissed. But in the circumstances of the case, I do not pass order for costs.