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**(2009) 01 P&H CK 0071**  
**In the Punjab And Haryana At Chandigarh**

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|---------------------------------------------|------------|
| Ram Sanjeevan and Others                    | APPELLANT  |
| Vs                                          |            |
| Presiding Officer, Labour Court and Another | RESPONDENT |

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**Date of Decision :** 09-01-2009

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 33, 33A

**Citation :** (2009) 2 LLJ 630 : (2009) 1 RCR(Civil) 692 : (2009) 2 SLR 120

**Hon'ble Judges :** Augustine George Masih, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Augustine George Masih, J.—Through the present writ petition, the petitioners nave challenged the order dated January 1, 2008 (Annexure-P-10) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T. Chandigarh, vide which an application preferred by the petitioners u/s 33-A of the Industrial Disputes Act, 1947, has been rejected on the ground that the said application is not maintainable before the Industrial Tribunal-cum- Labour Court as the contravention as alleged by the petitioners of Section 33 came into being when the proceedings for conciliation was pending before the Assistant Labour Commissioner and that no proceedings before that Court were pending.

2. The facts which are not in dispute in the present writ petition is that a demand notice dated November 23, 2001 raising four demands was made to the respondent-management and the said demand notice was pending conciliation proceedings before the Assistant Labour Commissioner, U.T. Chandigarh. The ? Assistant Labour Commissioner had issued summons on the said demand notice on the respondent-management for appearance on January 8, 2002. The respondent/management was served but they refused to accept the summons. Prior to that date fixed before the Assistant Labour Commissioner, the services of the petitioners were terminated on December 7, 2001. It is the contention of the petitioners that before terminating their services, they have not been given any notice or retrenchment compensation.

3. An application u/s 33-A of the Industrial Disputes Act was preferred before the Industrial Tribunal-cum-Labour Court, U.T. Chandigarh, on the ground that Section 33 of the Industrial Disputes Act has been violated as their services have been terminated during the pendency of the proceedings before the Assistant Labour Commissioner. The following issues were framed on the basis of the pleadings of the parties:

1. Whether during the pendency of the conciliation proceedings, the services of the workman were terminated in violation of Section 33 of the I.D. Act as alleged, if so to its effect? O.P.W.

2. Whether the terms and conditions of the workman are governed by the Punjab Affiliated Colleges (Security of Services of Employment) Act, 1974 as alleged ? O.P.W.

3. Relief.

The Industrial Tribunal-cum-Labour Court proceeded to decide issue No. 1 on the basis of the pleadings and evidence produced by the parties and came to the conclusion that as no proceedings were pending before the Industrial Tribunal-cum-Labour Court U.T. Chandigarh, therefore, the application, if any, could not have been filed before it and thus the application filed by the petitioners u/s 33-A was not maintainable before it.

4. Counsel for the petitioner contends that Section 33-A of the Industrial Disputes Act gives an option to the petitioners to choose the Forum where application u/s 33-A is to be preferred. He contends that as per Section 33-A(a) application to the Conciliation Officer even if preferred, would not serve the purpose as he does not have the adjudicatory powers. Since the order of termination already stands passed against petitioners, no relief could have been granted by the Assistant Labour Commissioner to the petitioners while exercising the authority u/s 33-A(a). That being the position, he submits that the only effective remedy for the petitioners was to move an application u/s 33-A(b) before the Industrial Tribunal-cum-Labour Court U.T. Chandigarh, which could grant effective relief to the petitioners. He justifies his this contention by relying upon the word "and" used between sub Sections (a) and (b) of Section 33-A. Elaborating thereon, counsel for the petitioners states that "and" gives an option to the employee to choose the forum and that having been exercised by the petitioners on the ground that the Conciliation Officer would not be able to grant relief, the Industrial Tribunal-cum-Labour Court should have entertained the application u/s 33A of the petitioners and proceeded to decide the same.

5. It has been conceded by counsel for the petitioners that there is no direct judgment, to his knowledge, which deals directly with the maintainability of the application u/s 33-A before the forum as per the choice of the employee and the contention which he has raised has been dealt with.

6. For deciding the present petition, reference to Section 33 Sub-sections (1), (2)

and (3) thereof and Section 33-A of the Industrial Disputes Act is essential and they are reproduced herein below:

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 an arbitrator or 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 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 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 or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman:

(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 as 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 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 proceeding; or

(b) by 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.

33-A. Special provision for adjudication as to whether conditions of service, etc.,

changed during pendency of proceeding.:

Where an employer contravenes the provisions of Section 33 during the pendency of proceedings (before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal) any employee aggrieved by such contravention, may make a complaint in writing, (in the prescribed manner,:

(a) to such conciliation officer or Board, and the conciliation officer or 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 or 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 a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.)

7. A perusal of Section 33 of the Act reproduced herein above would show that conditions of service etc. cannot be changed except under certain circumstances as envisaged under this Section during the pendency of the proceedings. Sub-section 1 of Section 33 states that during the pendency of any conciliation proceeding before the Conciliation Officer or a Board or of any proceeding before an arbitrator or Labour Court or Tribunal or National Tribunal in respect of industrial dispute, no employer shall change the conditions of service to the prejudice of the workmen in regard to any matter connected with such pending dispute. It further says that in case the same is required to be done, express permission in writing of the authority before" which the proceeding is pending has to be obtained. Sub-section 2 deals with cases where the employer takes action in accordance with the standing orders applicable to the workman and in their absence, in accordance with the" terms of the contract between them but in that situation also the statute provides that in case the workman has been discharged or dismissed, he has to be paid wages for one month and an application has to be made by the employer to the authority before which the proceeding is pending for approval of action taken by the employer. Sub-section 3 deals with case of protected workman. It states that the action can be taken with express permission in writing of the authority before which the proceeding is pending. Section 33, therefore, provides for protection of the conditions of services of the workman, as mentioned therein in regard to any matter connected with the dispute during the pendency of such proceedings before the authorities specified in this Section. Section 33-A provides for filing a complaint in writing in case of contravention of the provisions of Section 33 during the pendency of the proceedings before the concerned authority. The said application as per Sub-section (a) has to be made to the Conciliation Officer or the Board and as per Sub-section (b) to such arbitrator, Labour Court, Tribunal or National Tribunal.

8. A conjoint reading of Section 33 and 33-A would clearly depict that the application u/s 33-A would be maintainable before the authority where the proceedings were pending when the contravention of the provisions of Section 33 is alleged to have been made.

9. The contention of counsel for the petitioners that there is an option to the petitioners on the basis of the word "and" used between Sub-sections (a) and (b) of Section 33-A to file an application where an employer contravenes the provisions of Section 33 during the pendency of proceedings before the Conciliation Officer, before the Labour Court is not acceptable, as in case the said interpretation, as has been put forth by counsel for the petitioners, is accepted, that would render Sub-section (a) of Section 33-A redundant. The scheme of the Act itself provides for amicable and harmonious settlement of industrial disputes and prevention is also an object. The purpose is to promote measures for serving amity and good relations between the employers and workman. Conciliation proceedings has thus been mandated and incorporated in the settlement process to save time, energy, and avoid bad blood between the parties so that good working atmosphere for all prevails, it is therefore, that even in cases of termination, the process of conciliation is mandated under the Act. The intent and purpose primarily is to bring harmonious settlement between the parties. Sub-section (a) also emphasises the same where it envisages mediation and promotion of settlement of such industrial dispute. The petitioners are presupposing the failure of the conciliation process, without giving it a try or without giving it a chance to operate in its field of operation. If the contention of the counsel for the petitioner is accepted then it is presupposing that the Act itself is not workable, which is as a matter of fact incorrect. When a provision has been provided under the statute, it has to be given effect to and has to be followed. Each authority under the Act has to operate within their assigned fields, none can overstep its boundary assigned nor can it usurp the power and authority of the other in contravention of the statute.

10. Sub-section (b) has been provided u/s 33-A for cases where the proceedings are pending before those authorities as has been referred to in that sub-section. This has specifically been done for the reason that the dispute stands already referred to that authority for adjudication which is pending before it and Section 33 provides for certain protections to workman with regard to conditions of service and violation of such conditions of service in contravention of the provisions of Section 33 during the pendency of such dispute, if brought before the Conciliation Officer or Board would be a futile exercise, and the process of conciliation will not be effective as that has already failed which has resulted in the reference of the matter to the authority as referred to in Sub-section (b) for adjudication.

11. I am, therefore, unable to accept the contention put forth by counsel for the petitioner. In the light of the above, it is held that application u/s 33-A of the Industrial Disputes Act is maintainable to such authority before which the

proceeding is pending when an employer contravenes the provisions of Section 33 of the Act.

12. I do not find any illegality in the order passed by the Industrial Tribunal-cum-Labour Court U.T. Chandigarh, dated January 1, 2008 (Annexure-P-10) while holding that the said application u/s 33-A of the Industrial Disputes Act was not maintainable before the Industrial Tribunal-cum-Labour Court U.T. Chandigarh, as the proceedings were not pending before it when the provisions of Section 33 of the Act were contravened by the employer. This writ petition is dismissed.