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**(1982) 11 KL CK 0013**  
**In the High Court Of Kerala**

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| Secretary, Kottayam Dt. Co-operative M.S.U. Ltd. | APPELLANT  |
| Vs                                               |            |
| Industrial Tribunal                              | RESPONDENT |

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**Date of Decision :** 06-11-1982

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F, 33, 33A

**Citation :** (1983) 2 ILR (Ker) 184 : (1983) 2 LLJ 225

**Hon'ble Judges :** U.L. Bhat, J

**Bench :** Single Bench

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## Judgement

U.L. Bhat, J.—The petitioner herein is the Kottayam District Co-operative Milk Supplies Union Ltd. The 2nd respondent was employed under the petitioner as an attender in the petitioner's branch depot at Changancherry. On 8th May, 1976, he was found dealing with milk in unsealed bottles at the premises of the depot and the milk was found on analysis to contain 50 per cent added water. Disciplinary proceedings were initiated against him and the depot manager for misconduct, that is adulteration of milk with a view to make personal gains. He was kept under suspension with effect from 5th July, 1976. The enquiry committee constituted by the disciplinary action committee of the petitioner conducted domestic enquiry and found both of them guilty of the conduct. The disciplinary action committee considered the report and accepted it on 24th July, 1977 and resolved to remove the 2nd respondent from service as punishment. It was decided to impose a lesser punishment on the depot manager. The order of removal from service (Ext.PI) of the 2nd respondent was prepared and signed on 2nd December, 1977. Under the order he was removed from service with effect from the date of suspension namely 5th July, 1977. The order further stated that he was entitled to gratuity amount and one month's wages, that the same had been sanctioned and he could collect the money from the petitioner's office on production of proper receipt. Ext.PI was sent to the 2nd respondent by registered post. It was despatched on 9th December, 1977 and received by him on 12th December, 1977. He did not go to the petitioner's office to collect the gratuity amount or one month's wages. On 16th December, 1977, the amount was sent

to him by money order and he refused to receive it. On 2nd January, 1978, the 2nd respondent filed a complaint before the Industrial Tribunal, 1st respondent u/s 33A of the Industrial Disputes Act, for short "the Act" for contravention of the provisions of Section 33(2)(b) of the Act and the same had been received on file and numbered as I.D.3 of 1978. At the time of Ext.PI order, there was an industrial dispute pending before the 1st respondent between the management and the employees as I.D. 16 of 1976. Therefore an application for approval of the discharge, that is, the compulsory retirement order, u/s 33(2)(b) of the Act was prepared on 9th December, 1977. It was despatched by post to the 1st respondent on 10th December, 1977 and was received by the 1st respondent on 14th December, 1977. It was numbered as M.P. 8 of 1977. M.P. 8 of 1977 and I.D. 3 of 1978 were taken up for enquiry together and the 1st respondent passed Ext.P2 order rejecting the application for approval u/s 33(2)(b) and directing I.D. 3 of 1978 to be adjudicated upon. ExtP2 order is challenged in this original petition by the management.

2. The Industrial Tribunal held that the discharge order, Ext.PI was really made on 2nd December, 1977 when it was prepared and signed, the effective tender of one month's wages was made only on 16th December, 1977 when it was sent by money order and the application for approval was effectively submitted on or after 10th December, 1977 and these three actions were not simultaneously taken or as part and parcel of the same transaction and therefore there was a contravention of the provisions of Section 33(2)(b) of the Act. The 1st respondent also held that the domestic enquiry conducted was vitiated and the finding was perverse. Meanwhile, the petitioner had sought for an opportunity to adduce evidence in justification of the charge against the 2nd respondent. The 1st respondent held that the evidence would be adduced in I.D. 3 of 1978.

3. The main question arising for consideration is whether the petitioner had satisfied the conditions contemplated in Section 33(2)(b) of the Act. This provision requires that during the pendency of any proceedings before Labour Court or Tribunal etc. in respect of an industrial dispute the employer may for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise any workman; provided that no workman shall be discharged or dismissed unless he has been paid wages for one month and 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. It is well settled that the three acts, namely, the action of discharge or dismissal, the payment of wages for one month and the making of an application for approval of the action taken by the employer before the Tribunal must be so made as to be part and parcel of the same transaction.

4. The 1st respondent held that the order of discharge was made on 2nd December, 1977 that is, the date on which the order was prepared and signed. This conclusion does not appear to be correct. As long as an order of discharge has not been despatched or posted and as long as the order does not leave the

hands of employer, the employer has always the option to refrain from implementing the order and from communicating it. Once the order leaves the hands of the employer in its journey destined towards the employee, a stage is reached where the employer cannot recall the order. It is only when the order is so despatched by the employer that it could be said that it takes effect. The order in this view does not take effect on the day on which it is prepared or on the day on which it is signed, it can take effect only when it leaves the hands of the employer. The order in this case left the hands of the employer on 9th December, 1977. The finding of the 1st respondent that since the order was prepared on 2nd December, 1977, it took effect on that date is legally unsustainable.

5. The real controversy in the case is whether the employer had paid one month's wages to the employee as contemplated in Section 33(2)(b) of the Act and if so when it was done. In Ext. PI order, which was despatched on 9th December, 1977 and received by the 2nd respondent on 12th December, 1977, it was stated that the 2nd respondent was entitled to gratuity amount and one month's wages, that the amount had been sanctioned and the 2nd respondent could collect the same from the petitioner's office on production of a receipt. The 1st respondent held that this does not constitute payment or valid tender of one month's notice to the 2nd respondent employee. The 2nd respondent did not turn up at the office of the petitioner to receive the money. Therefore on 16th December, 1977, the petitioner sent the money to the 2nd respondent by money order and the latter refused to accept it. According to the 1st respondent, valid tender was made only on 16th December, 1977. This view is seriously challenged by learned Counsel for the petitioner. Learned counsel would contend that a mere offer to pay the amount due is sufficient to constitute valid tender and such valid tender could be equated with payment contemplated in Section 33(2)(b) of the Act.

6. What Section 33(2)(b) states is that "no such workman shall be discharged or dismissed unless he has been paid wages for one month". In the normal course, there must be actual payment made to the employee. It may be that the employee refuses to receive the money. In such a case the offer of the employer to pay the money would constitute, in the eyes of law, payment for the purpose of this provision. In order that an offer or tender could be equated with payment for the purpose of this provision, it is not sufficient that an oral offer is made to the employee that he is at liberty to go to the employer and collect the money. The money must be actually offered to the employee. Where the money is not offered to the employee, it remains only an oral offer unsupported by production of money and would not constitute valid tender so as to amount to payment.

7. In the Law Lexicon by P. Ramanatha Iyer, the word "tender" has been explained thus:

Offer; proposal for acceptance; offer to pay a specified sum or do certain acts; the offering, of money or any other thing in satisfaction...

"Tender" is defined to be the offer of money in satisfaction of a debt, by producing and showing the amount to the creditor or party claiming, and expressing verbally a willingness to pay it.

"Tender" is defined to be an offer by a debtor to the creditor of the amount of the debt. The offer must be in lawful money, which must be actually produced to the creditor, unless by means or acts he waives production, and the offer must be definite and unconditional.

In Black's Law Dictionary, tender has been explained thus:

An offer of money; the act by which one produces and offers to a person holding a claim or demand against him the amount of money which he considers and admits to be due, in satisfaction of such claim or demand, without any stipulation or condition.

8. Learned counsel for the 2nd respondent has placed reliance on certain decisions arising u/s 25F of the Act. The decisions are *Strawboard Manufacturing Co. Vs. Gobind, , Pepsu Transport Co. (P) Ltd. v. State of Punjab and Ors.* 1965 II L.L.J. 552, *National Iron and Steel Co. Ltd. and Others Vs. The State of West Bengal and Another*, and *Rajasthan Canal Project Vs. Rajasthan Canal Rastriya Mazdoor Union and Another, .* In the first of these decisions, the Supreme Court observed that the employer need only tender the amount due and if the tender is accepted his responsibility is over. In the next case decided by the Punjab and Haryana High Court it has been stated that the employer is at liberty to send a notice to the employee requesting him to meet the employer and to collect the amount due and if the latter does so, that is the end of the matter; if, however, the employee does not come and collect the money due it is the duty of the employer to send the money to the employee. Mere notice issued by the employer which is not acted upon is not sufficient to constitute payment or tender. In case, the employee declines to go over and receive the amount in pursuance of the notice, it is the duty of the employer to send it to him the same day or the next day. Then only it can be said that the employer has complied with the condition. In *National Iron and Steel Company Ltd.* case, the workman was asked to collect dues from the office of the employer during working hours and he did not do so. The Supreme Court held that there was no compliance with the provisions of Section 25F of the Act. It was incumbent on the employer to pay the money. If the employee was asked to go forthwith, he had to be paid at that time when he was asked to go and could not be asked to collect his dues afterwards. In the *Rajasthan Canal Project* case, the Rajasthan High Court had to deal with a case where the employer served notice of termination with effect from a particular date and kept the money ready at the office but the workman was absent on that day and it was not paid. It was held that the offer should have been made by sending the amount by money order and mere readiness to pay was not sufficient. There must be an actual payment or offer or tender.

9. The above decisions clearly support the view taken by the 1st respondent that

there must be an actual payment or a tender with the production of money. Learned counsel for the petitioner would contend that these cases dealt with the conditions of Section 25F of the Act which contemplates payment as a condition precedent and therefore would not apply to a case arising u/s 33(2)(b) of the Act. The wording used in the two provisions is identical. Section 33(2)(b) mentions "has been paid". Section 25F also mentions "has been paid". I see no reason to hold that the principle accepted in the above decisions would not apply to a case arising u/s 33(2)(b) of the Act.

10. It is thus well settled that when a provision of law states that an amount must be paid, a valid tender of the amount even followed by a refusal to receive would be sufficient discharge of the obligation cast on the person required to pay the amount. Mere offer to pay or even setting apart money for the purpose of payment in case the person entitled to receive it approaches would not be sufficient to make it a tender. By tender is meant an offer coupled with production of the money so that at the point of time of the offer the other person must be able either to receive it or to refuse to receive it. The tender can be made by actual production of the amount in the presence of the employee or it can be sent by money order or demand draft or in any other convenient form. A mere invitation to go over and receive the amount cannot be treated as tender. I therefore hold that the 1st respondent was right in holding that tender of one month's wages in this case was made only on 16th December, 1977 and not along with the despatch of the order of discharge. The order of discharge was despatched on 9th December, 1977. The application of approval was posted on 10th December, 1977 and was received by the 1st respondent on 14th December, 1977. Even assuming that the date of despatch must be the date of application it can be seen that the three acts mentioned in Section 33(2)(b) of the Act were not performed in this case as part and parcel of the same transaction. The tender of one month's wages was made several days after the order of discharge and also several days after the making of the application. The 1st respondent was therefore right in holding that the petitioner had violated the terms and conditions stipulated in Section 33(2)(b) of the Act. The refusal to grant approval to the order of discharge was therefore justified.

11. In this view, it is unnecessary to consider whether the findings of the 1st respondent to the effect that the domestic enquiry was not properly conducted and that the finding is perverse, is correct or not. The 1st respondent was also justified in holding that it was unnecessary to allow the employer to adduce evidence in support of the order of discharge. Even if the employer had successfully supported the order of discharge by adducing evidence that could not have enabled the 1st respondent to grant approval u/s 33(2)(b) because the terms and conditions of the provision had not been complied with by the petitioner. Further, as rightly pointed out by the 1st respondent, a complaint u/s 33A is pending before the Tribunal and the employer could very well adduce evidence in support of the action in that proceeding.

12. In the result, the original petition is dismissed, but in the circumstances, without costs.