

(2012) 07 KAR CK 0046

In the Karnataka High Court

Case No : Writ Petition No's. 24118-120 of 2009

Sri M.M. Narayana and B.R. Devalasetty

APPELLANT

Vs

The Management of Ksrtc

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33 (2) (b), 33 A

Citation : (2013) 3 KarLJ 415 : (2013) LabIC 142

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : V.S. Naik and MS. Manjula N. Kulkarni in W.P. Nos. 24118-120/2009, 504/2012, Sri. L. Shekar in W.P. Nos. 10219, 10333/2012, Sri. B.L. Sanjeev in W.P. Nos. 6060/2012, Sri. K.S. Bharath Kumar in W.P. Nos. 6016/2012 and Sri. L. Govindraj in W.P. Nos. 3729 and 47896/2012, for the Appellant; Shwetha Anand, Advocate in W.P. Nos. 24118-120/2009, Sri. M.S. Narayan, Advocate in W.P. Nos. 504/2012, Smt. H.R. Renuka, Advocate in W.P. No. 10333/2012, Sri. L. Govindaraj, Advocate in W.P. Nos. 10219/2012, Sri. L. Shekar, Advocate in W.P. Nos. 3729, 6060 and 47896/2012, for the Respondent

Final Decision : Allowed

Judgement

The Hon"ble Mr. Justice Aravind Kumar

1. In W.P. Nos.24118-120/2009, 504/2012, 10333/2012 and 10219/2012 workmen have called in question the award passed by the Labour Court whereunder claim petitions filed by the workmen has been dismissed. W.P. Nos. 6060/2012, 6016/2012, 47896/2011 and 3729/2012 have been filed by Bangalore Metropolitan Transport Corporation and Karnataka State Road Transport Corporation (both are referred to as "Corporation" hereafter for the sake of brevity) questioning the awards passed by the Labour Court whereunder the claim petitions filed by the workmen have been allowed and orders of punishment of dismissal have been set aside as nonest on the ground that management has failed to take into consideration the pendency of I.D. 148/2005 and not complied with the provision of Section 33(2)(b) Industrial Disputes Act,

1947 by relying upon the judgment of the Hon''ble Apex Court reported in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others,

2. I have heard the arguments addressed by the learned advocates appearing for the parties. On behalf of the corporations Sri. S.N. Murthy, learned Senior Counsel has led the argument and Smt. Shwetha Anand also appearing for Corporation has supported same and also has supplemented her arguments. Sri. V.S. Naik and Sri. L. Shekar, learned Advocates have argued on behalf of the workmen.

3. It is the contention of Sri. S.N. Murthy, learned Senior counsel appearing for the corporation that if there is a contravention or non compliance of section 33(2) (b) of the Industrial Disputes Act, 1947 there is a remedy available to such aggrieved workman namely such workman can approach the Authority, Court or Tribunal as the case may be u/s 33A which is a special provision for adjudication of contravention of section 33(2)(b) by an employer, that too during the pendency of proceedings before Conciliation officer, Board, Arbitrator, Labour court, Tribunal and as such mere non-compliance of section 33(2)(b) would not result in the order of discharge or dismissal being nonest and if it is to be so construed then section 33A would become superfluous or in the alternate it becomes redundant. He would further submit that if an employer contravenes the provisions of section 33 during the pendency of the proceedings before Conciliation officer, Board, Arbitrator, Labour court, Tribunal, the workmen aggrieved by such contravention if any has to make complaint in writing to the authority prescribed under said section and such workmen cannot contend that award passed by the Labour court pursuant to such order of discharge or dismissal is nonest on account of employer not obtaining approval or the same being nonest on said ground. He would elaborate his submissions by contending that as on the date of order of dismissal passed in these cases the corporation has followed the law that was existing as on the said date namely the judgment of Hon''ble Apex Court in the case of Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, which was holding the field and contends that in the instant cases workmen should have reported for duty if the order was nonest and admittedly these workmen did not choose to report for duty on the ground that order of dismissal being nonest and as such he contends now the workmen cannot take shelter u/s 33(2)(b) of the Industrial Disputes Act to assail the order of dismissal as bad in law on the ground it is nonest. Supporting the arguments of Sri. S.N. Murthy, Smt. Shwetha Anand, learned counsel who is also appearing for the corporation would submit that it has to be seen as to whether I.D. 148/2005 is an "Industrial Dispute" or not so as to cast a burden on the employer to obtain permission from said Tribunal when a workman is discharged or dismissed as required u/s 33(2)(b) of the Act. She also contends that section 33(2)(b) is not at all attracted since the Labour court has not examined as to whether these workmen are members of the union since no list of members was produced and as such no inference can be drawn unless it is demonstrated by

cogent evidence that these workmen were members of the union which has raised dispute in I.D. 148/2005 and unless it is demonstrated that these workmen are members of the union and they have been paying subscription to the said union it cannot be held or construed that on account of pendency of dispute in I.D. No. 148/2005 raised by the trade union the employer namely the corporation had to seek approval of the said Labour court before dismissing these workmen from services of the corporation. She would also submit even if the order of dismissal is nonest the Labour court ought to have examined the case or claim on merits. In support of their submissions they have relied upon the following judgment:

Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, etc,

4. Per contra Sri. V.S. Naik would contend that admittedly there was a dispute pending in I.D. 148/2005 between the Union and the corporation which relates to all the four corporations and u/s 33(2)(b) of the Industrial Disputes Act no employee could be discharged or dismissed without approval before whom such proceedings is pending and if such an order of discharge or dismissal is passed against workmen it would be in contravention of said provision and nonest. He would submit that if an award is passed either in favour of the employer or against the workmen pursuant to such order of discharge or dismissal it would be liable to be set aside and contends that dicta laid down by the Hon"ble Apex Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, is a complete answer to the arguments advanced by the learned senior counsel appearing for corporation. On these grounds he seeks for dismissal of the writ petitions filed by the corporation and prays for allowing the writ petitions filed by workmen. Sri. L. Shekar would support the arguments advanced by Sri. V.S. Naik. In support of his submission he relies upon the following judgments:

- (1) Strawboard Manufacturing Co. Vs. Gobind,
- (2) The Lord Krishna Textile Mills Vs. Its Workmen,
- (3) New India Motors (P) Ltd. New Delhi Vs. K.T. Morris,
- (4) Smt. Harjeet Kaur Vs. DTC,
- (5) The Management Tamil Nadu State Transport Corporation (Madurai, Division-V) Ltd. Vs. The Joint Commissioner of Labour (Conciliation) and M. Thennarasu,
- (6) M/s. Paradeep Phosphates Ltd. Vs. Sankar Das and Another,
- (7) UNREPORTED JUDGMENTS RENDERED IN W.P. NOS. 16211/2011, 18505/2011 AND 39589/2011 (L-KSRTC) ON 26.07.2011, 01.08.2011 & 30.11.2011 RESPECTIVELY.
- (8) Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others,

5. Having heard the learned advocates appearing for parties I am of the considered view that following points common to all these writ petitions would arise for consideration:

Whether an order of discharge or dismissal passed against a workman without complying section 33(2)(b) would be nonest

OR

Whether management/employer need not seek approval of Labour court while discharging or dismissing a workman as required under proviso to clause (b) of subsection (2) of section 33 of the Industrial Disputes Act, 1947 on the ground that such aggrieved workman has a remedy u/s 33A of the Industrial Disputes Act, 1947?

6. In order to answer these alternate points formulated herein above, in the background of contentions raised, it would be necessary to extract the relevant statutory provisions governing the issue, and thereafter record my findings thereon by referring to the case laws. Hence, under these headings points formulated hereinabove are being analysed, considered and answered.

STATUTORY PROVISIONS:

(Industrial Disputes Act, 1947)

2(k) "industrial disputes" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

33: conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings -

(1) XXX

(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) xxx

(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.

(5) Where an employer makes an application to a Conciliation officer, Board, an Arbitrator, 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 applications and pass within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit;

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit;

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

33A: 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.

ANALYSIS OF STATUTORY PROVISION:

7. Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as "Act") defines "industrial dispute" to mean any dispute or difference between employers and employers, or between employers and workmen or between workmen and workmen which is connected with the employment or non employment or the terms of employment or with the conditions of labour. When a demand by workmen is raised before the management and same is rejected by it and such rejection is called in question by a workman or the union of which the workman is having interest in common and through said union if a dispute is raised it would constitute a industrial dispute. u/s 33 of the Act conditions of service etc., relating to a workman has to remain unchanged during the pendency of any proceedings either before Conciliation officer, Board, Arbitrator, Labour Court or Tribunal as the case may be and no employer shall for any misconduct not connected with the dispute can discharge or dismiss the

workmen without express approval from the said Conciliation Office, Board, Arbitrator, Labour Court or Tribunal as the case may be.

8. Under clause (b) of sub-section (2) of section 33 during the pendency of such proceedings in respect of an industrial dispute pending, such employer cannot discharge or dismiss a workman for any misconduct not connected with the dispute unless the employer makes an application before such authority or court or Tribunal as the case may be before which a dispute is pending and seeks approval of the action taken by it. Under sub-section (5) of section 33 such application filed by an employer is required to be disposed of within a period of three months by the authority before which such proceedings is pending. Contravention of this provision would visit such employer with imprisonment for a term which may extend to six months or with fine or both under section 31 of the Act. A reading of said provision leaves no doubt that in case of management intends to discharge or dismiss a workman from service it would be at liberty to do so, subject to obtaining approval of its action before whom such proceedings are pending. This clearly goes to establish that compliance of provision of section 33(2)(b) on the part of the employer is mandatory. In other words if an employer desires either to discharge or dismiss a workman during the pendency of a dispute such employer may proceed to do so which would be subject to obtaining the approval before whom such proceedings/dispute is pending. The very fact that an employer has to obtain approval and not obtaining such approval would result in penal consequences would clearly go to show that section 33(2)(b) is mandatory and not otherwise.

9. Section 33A is a special provision designed to provide an instant remedy to a workman, namely if a workman is aggrieved by any action of an employer in discharging or dismissing the workman without obtaining approval as required u/s 33(2)(b), he has been given an option to make a complaint in writing to the authority before whom an industrial dispute is pending, and seek redressal of his grievance. Earlier to the said section being brought into statute the only remedy that was available to a workman/employee was to seek a reference from "appropriate Government" u/s 10 of the Act, when there is a breach of section 33(2)(b). However, now section 33A enables such employee to make a complaint in writing in the prescribed manner to the concerned authority complaining breach of section 33(2)(b) which would be tried as an industrial dispute. Thus, workman is saved of the botheration of moving the "appropriate Government" seeking reference of the dispute for adjudication which it may or may not refer. In other words, it means the workman can have redressal of his grievance without recourse to section 10 of the Industrial Disputes Act, 1947. It is this precise point which came-up for consideration before the Hon'ble Apex Court in The Lord Krishna Textile Mills Vs. Its Workmen, and was held as follows:

The Lord Krishna Textile Mills Vs. Its Workmen,

It may also be urged in support of the first contention that if the ban imposed by the proviso does not mean that an application has to be made before any action

is taken by the employer it would be left to the sweet will of the employer to make the requisite application at any time he likes. The section does not provide for any reasonable period within which the application should be made and prescribes no penalty for default on the part of the employer in making such an application within any time. On the other hand, this argument can be met by reference to section 33A of the Act. If an employer does not make an application within a reasonable time the employee may treat that as contravention of section 33(2)(b) and make a complaint u/s 33-A and such a complaint would be tried as if it is an industrial dispute; but, on the other hand, an employer can attempt to make such a complaint ineffective by immediately proceeding to comply with section 33(2)(b) by making an application in that behalf and the authority may then have to consider whether the delay made by the employer in making the required application u/s 33(2)(b) amounts to a contravention of the said provision, and such an enquiry could not have been intended by the Legislature; that is why the making of the application should be treated as a condition precedent under the proviso. If that be the true position then the employer has to make an application before he actually takes the action just as he has to tender money to the employee before dismissing or discharging him. But, if it is not a condition precedent, then he may pass an order of discharge or dismissal and make an application in that behalf within reasonable time.

(Emphasis supplied by me)

The issue which came-up for consideration in the said judgement was whether Section 33(1) & (2) provides for any limitation to file an application seeking approval or not and it has been held that in the event of employer not filing such an application seeking approval of its action the employee would be at liberty to make a complaint u/s 33A of the Act. It has also been held that making of an application under proviso to Section 33(2)(b) is condition precedent while discharging or dismissing workman.

Yet again Hon'ble Supreme Court considered the gamut of "proviso" to Section 33(2)(b) and held as follows:

Strawboard Manufacturing Co. Vs. Gobind,

8. Let us now turn to the words of the proviso in the background of what we have said above. The proviso lays down that no 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. It will be clear that two kinds of punishment are subject to the conditions of the proviso, namely, discharge or dismissal. Any other kind of punishment is not within the proviso. Further the proviso lays down two conditions, namely, (i) payment of wages for one month and (ii) making of an application by the employer to the authority before which the proceeding is pending, for approval of the action taken. It is not disputed before us that when the proviso lays down the conditions as to payment

of one month's wages, all that the employer is required to do in order to carry out that condition is to tender the wages to the employee. But if the employee chooses not to accept the wages, he cannot come forward and say that there has been no payment of wages to him by the employer. Therefore, though S.33 speaks of payment of one month's wages it can only mean that the employer has tendered the wages and that would amount to payment for otherwise a workman could always make the section unworkable by refusing to take the wages. So far as the second condition about the making of the application is concerned, the proviso requires that the application should be made for approval of the action taken by the employer. It has been urged on behalf of the respondent that the words "action taken" in this part of the proviso mean the action proposed to be taken and therefore all that the employer can do is to make an application to the tribunal asking it to approve the action proposed to be taken by it and it is only after the approval that the employer can proceed to dismiss or discharge the workman. We are however of opinion that on this interpretation there would really be no difference between sub-s. (2) and sub-s. (1) of S.33 and the intention of the legislature in making the amendment in 1956 would be rendered nugatory. Moreover, it is against the rules of interpretation to add words to a provision, when the provision, as it stands, is capable of a reasonable meaning which will give effect to the intention of the legislature even on the words as they stand. On the plain meaning of the proviso, it is clear that it gives the employer the power to discharge or dismiss the employee before obtaining the approval of the tribunal concerned; but at the same time the protection afforded to the employee by the proviso has to remain effective. It seems to us therefore that when the proviso speaks of an application for approval of the action taken, the action taken there is the order of actual discharge or dismissal made by the employer and it is for the approval of this order that the application is to be made. This is borne out by Form "K" under R.60 of the Rules framed under the Act which corresponds to Form XV under R.31 of the U.P. Rules. Further the use of the word "approval" in the proviso also suggests that something has been done by the employer who seeks approval of that from the tribunal. If the intention was that in view of the proviso the employer could not pass the order of dismissal or discharge without first obtaining the approval of the tribunal, we see no reason why the words in the proviso should not have been similar to those in sub-ss. (1) and (3), namely, that no workman shall be discharged or dismissed without the express permission in writing of the authority concerned. The change therefore in the language used in the proviso to sub-s. (2)(b) clearly shows in our opinion that the legislature intended that the employer would have the right to pass an order of discharge or dismissal subject to two conditions, namely, (i) payment of wages for one month and (ii) making of an application to the authority concerned for approval of the action taken. The use of the word "approval" also suggests that what has to be approved has already taken place, though sometimes approval may also be sought of a proposed action. But it seems to us in the context that the approval here is of something done, as otherwise it would have been quite

easy for the legislature to use the words "for approval of the action proposed to be taken" in the proviso. Further sub-s.(5) also suggests when it uses the words "approval of the action taken" that some action has been taken and it is that action which the employer wants to be approved by his application. The difference between sub-s.(1) and sub-s.(2) is therefore that under sub-s.(1) the employer proposes what he intends to do and asks for the express permission of the authority concerned to do it; in sub-s.(2) the employer takes the action and merely asks for the approval of the action taken from the authority concerned by his application. There can therefore be no doubt that sub-s.2(b) read together with the proviso contemplates that the employer may pass an order of dismissal or discharge before obtaining the approval of the authority concerned and at the same time make an application for approval of the action taken by him. It is however urged on behalf of the respondent that if the employer dismisses or discharges a workman and then applies for approval of the action taken and the tribunal refuses to approve of the action the workman would be left with no remedy as there is no provision for reinstatement in S.33(2). We however see no difficulty on this score. If the tribunal does not approve of the action taken by the employer the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In such a case no specific provision as to reinstatement is necessary and by the very fact of the tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer. In that sense the order of discharge or dismissal passed by the employer does not become final and conclusive until it is approved by the tribunal under S.33(2).

(Emphasis supplied by me)

The core issue which came up for consideration in this judgement was two fold namely what are the necessary conditions required to be adhered to by an employer when an order of discharge or dismissal is passed in respect of an employee/workman when an Industrial Dispute is pending. It has been held that if the employer has to have the benefit of proviso to Section 33(2)(b) such employer has to necessarily comply with both condition stipulated in the said proviso viz.,

(i) Payment of one month salary, and

(ii) Filing an application u/s 33(2)(b) seeking "approval" of it's action of discharge or dismissal. It has been further held the filing of an application is post facto namely after passing an order of discharge or dismissal and not prior approval.

In that view of the matter the contention of Sri. S.N. Murthy, learned senior counsel appearing for the corporation that section 33A is an independent provision which enables the workman to seek redressal of his grievance for

breach of section 33(2)(b) bars scrutiny of such grievance in a regular proceedings namely in a dispute cannot be accepted for reasons more than one. In a given case where an application is made by a employer seeking approval of the order of discharge or dismissal of a workman, the enquiry held u/s 33(2)(b) by the Labour court or the Tribunal is limited and it does not sit over the findings of the enquiry officer as an Appellate authority. The scope of enquiry is limited. It has no similar power as available u/s 11A of the Industrial Disputes Act, 1947 while adjudicating an application for approval filed by the Management u/s 33(2)(b) and it cannot evaluate as to whether punishment imposed is proportionate or otherwise to the alleged misconduct. The finding on the domestic enquiry is a collateral finding and it cannot be treated as a finding on a issue directly and substantially under consideration. The Hon"ble Supreme Court in the case of The Punjab National Bank Ltd. Vs. Its Workmen, has held as under:

(24) Where an application is made by the employer for the requisite permission under S.33 the jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimization or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In theses proceedings it is not open to the tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it according as it holds that a prima facie case is or is not made out by the employer.

(25) But it is significant that even if the requisite permission is granted to the employer under S. 33 that would not be the end of the matter. It is not as if the permission granted under S. 33 validates the order of dismissal. It merely removes the ban; and so the validity of the order of dismissal still can be, and often is, challenged by the union by raising an industrial dispute in that behalf. The effect of compliance with the provisions of S. 33 is thus substantially different from the effect of compliance with S.240 of the Government of India Act, 1935, or Art. 311(2) of the constitution. In the latter classes cases, an order of dismissal passed after duly complying with the relevant statutory provisions is final and its validity or propriety is no longer open to dispute; but in the case of S. 33 the removal of the ban merely enables the employer to make an order of dismissal and thus avoid incurring the penalty imposed by S. 31(1). But if an industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requisite permission obtained under S. 33 has to face the scrutiny of the tribunal.

(Emphasis supplied by me)

10. This court while considering whether finding given in a proceedings u/s 33(2) (b) would act as a resjudicata while adjudicating reference u/s 10 of the Industrial Disputes Act held same in the negative in the case of the Management of M/s. Amalgamated Electric Company Ltd., Belgaum Branch Vs Workman, M/s. Amalgamated Electric Company Ltd., Belgaum Branch reported in 1975 Lab I.C.879 as under:

4. Sri. Desai xxx Justified or not. The finding recorded in a proceeding u/s 33(2) (b) regarding the validity of a domestic enquiry cannot be used as resjudicata in a reference u/s 10 even though the questions that arise for consideration are the same. In the circumstances it cannot be held that the Additional Industrial Tribunal in the instant case has committed any jurisdictional error.

(Emphasis supplied by me)

11. When a finding recorded by a Labour court on an application seeking approval of the order of dismissal cannot be construed as resjudicata in a proceeding initiated by an employee u/s 33A then necessary corollary which has to be inferred is that a finding recorded u/s 33(2)(b) and finding given on domestic enquiry also cannot operate as resjudicata in a reference u/s 10 and these two provisions are separate, independent and distinct. When they are invoked by filing petition/application same would be adjudicated as a independent proceeding and it does not overlap with each other. A dismissal of worker after securing approval u/s 33(2)(b) would stand on the same pedestal as a dismissal without an approval. Such orders are liable to be interfered either u/s 10(1) or u/s 33A proceedings. The proceedings u/s 33A is on par with section 10 in as much as Labour court or the Tribunal as the case may be will make an award which becomes enforceable u/s 17A of the Industrial Disputes Act, 1947. In that view of the matter also the contention of the learned counsel appearing for petitioner-corporation cannot be accepted and same is liable to be rejected.

CONCLUSIONS;

12. At the undisputed point of time namely when the workmen in question were dismissed from service a dispute had already been raised by the Union by placing charter of demands which was admittedly pending in I.D. NO. 148/2005 before the Industrial Tribunal, Bangalore. In these cases it is noticed that workmen through their union namely KSRTC Staff and Workers Union had raised a dispute against the management since the charter of demands raised on behalf of its members had not been accepted and as such said dispute was pending before the Industrial Tribunal, Bangalore in I.D. 148/2005. Thus, it can be held safely that I.D. 148/2005 if allowed would result in consequential benefits accruing to these workmen who are undisputedly members of the said union and as such they have a direct interest in the said dispute pending before the Industrial Tribunal in I.D. 148/2005. In none of the disputes (relating to the writ petitions in question) an application seeking approval of its action to dismiss the workmen

was filed before the said Tribunal (namely the Industrial Tribunal adjudicating I.D. No. 148/2005) by the respondent-corporations. (Management)

13. A reading of proviso to section 33(2)(b) would clearly go to show that an employer who does not file an application and seek approval of the Court/Tribunal etc., before whom such dispute is pending, u/s 33(2)(b) such employer cannot be relieved of his statutory obligation created under the Act on the ground the aggrieved workman can pursue his grievance by filing a complaint u/s 33A since such interpretation would lead to the very intent of the legislature in incorporating the said proviso being negated.

14. For the purposes of better understanding of proviso to section 33(2)(b) I am of the view that following illustration would reflect some light:

ILLUSTRATION:

Let us assume in a given case if an application u/s 33(2)(b) is made by an employer and said application on merits gets rejected then, it would mean that order of termination would be void ab initio or in other words the employee is deemed to have continued in service.

If this analogy is taken into consideration and applied to a situation where no application is filed then, the situation in which an employer would be placed is some what similar or stands on a further slippery ground and it cannot be gain said that "employer" and "employee" relationship even in such circumstances has ceased to exist.

When there is no approval granted by a competent court or Tribunal as the case may be u/s 33(2)(b) or in other words not approving the action of the employer in discharging or dismissing an employee, then in effect it would mean and include that relationship of "employer" and "employee" is still subsisting.

15. Infact issue regarding effect of not granting an approval sought for by the employer or not obtaining approval from a competent court or Tribunal by the employer as required u/s 33(2)(b) by filing of an application is now well settled by the judgment of the Hon^{ble} Apex Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, whereunder it has been held that a contrary view cannot be taken when an order of discharge or dismissal passed by an employer is in contravention of the mandatory conditions contained in proviso to Section 33(2)(b) other than holding such an order as inoperative or void, since it would defeat the very purpose of the proviso and it becomes meaningless in as much as no part of a statute shall be construed as unnecessary or superfluous. In said case it has been held as under:

Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others,

11. Per contra, in Punjab Beverages (supra), it is held that an order dismissing the workman contravening section 33(2)(b) shall not be void and inoperative and hence the workman was not entitle to maintain the application for determination

and payment of wages u/s 33C (2); a workman can proceed u/s 33-C (2) only after the Tribunal has adjudicated on a complaint u/s 33-A or on a reference u/s 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman; rejecting a contention that the workman would be left without any remedy on the interpretation that contravention of section 33 does not invalidate an order of discharge or dismissal, it is stated that if the employer contravenes section 33, he would be liable to punishment u/s 31(1) and moreover the aggrieved workman can act u/s 10 or he can make a complaint to the tribunal u/s 33A; it was held that the withdrawal of the application made u/s - stands on the same footing as if no application thereunder has been made; if there was no decision on merit of the said application, it cannot be said that the approval has been refused by the Tribunal.

13. The proviso to section - as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of section 33 and in the context of the proviso to section -, it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of section 33 invites a punishment u/s 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both. This penal provision is again a pointer of the mandatory nature of proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed u/s - is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of section - is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to section - affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of section - to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without

complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

14. Where an application is made u/s - proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking section - dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint u/s 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory-conditions contained in the proviso or where the approval is refused, a workman should still make a complaint u/s 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside u/s 33-A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to section -. It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to section -, section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

18. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of Strawboard and Tata Iron and Steel Co. and further state that the view expressed in Punjab Beverages on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly.

16. In view of the dicta laid down by the Hon'ble Supreme Court in Jaipur Zila Sahakari Bank's case referred to supra that section 33A is available to an employee and is intended to save his time and trouble inasmuch as he can straight away make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of discharge or dismissal instead of making efforts to raise an industrial dispute and get a reference for adjudication, it cannot be said that on account of this provision being available section - is not mandatory. As observed herein above proviso to section - casts a mandatory obligation or duty on an employer to file an application/petition and seek approval of the authority or the Labour court as the case may be, by seeking its approval the order of discharge or dismissal passed against the workmen. It is an independent provision by itself or in other words it is a code by itself. Hence, non compliance of said provision by a employer visits him with penal consequences and as such section - has to be understood as mandatory and non-compliance of said mandatory provision would result in order of dismissal or discharge being nonest. In that view of the matter contentions raised by Learned Advocates appearing for management cannot be accepted and it is hereby rejected.

17. For the reasons aforesaid the points formulated herein above has to be answered by holding that an order of discharge or dismissal passed against a workman without obtaining approval u/s - would be nonest. If the management/ employer does not seek approval of Board, Arbitrator, Court/Tribunal etc., as required u/s - on the ground that such aggrieved workman has a remedy u/s 33A of the Industrial Disputes Act it would not validate such order of discharge or dismissal and in such cases order of discharge or dismissal would be nonest and void.

18. Now let me examine the contentions raised in each of the writ petitions and as to whether the principles laid down herein above would be applicable to the facts of each case.

RE: W.P. 24118-120/2009 -

19. Before the Labour court in I.D. No. 36, 50 and 51/2006 workmen have contended in paragraph 10A of the claim petitions that order of dismissal is nonest and inoperative on the ground that dispute raised by KSRTC Workers Federation relating to charter of demand was pending adjudication on the file of the Presiding Officer, Industrial Tribunal, Bangalore in I.D. 148/2005 and these workmen were concerned workmen in the said dispute and there has been non compliance of Section - and as such the order of dismissal is bad in law. Said contention has been reiterated by the workmen in their evidence to demonstrate that they were members of the Staff and Workers Federation. The annual returns reflecting the name of the first petitioner was produced as Exhibit -W-2. Likewise petitioners 2 and 3 have also produced the certified copy of membership as per Exhibit -W-4 and W-6 to establish that they were members of Workers Federation. Though respondent -corporation denied these facts in their counter

statement and evidence, such contention has remained as a plea without proof. Hence, in this background it is to be held petitioners being the members of the Staff and Workers Federation which had raised a dispute in I.D. 148/2005 and same was pending before the Industrial Tribunal, Bangalore and as such it was incumbent upon the management-corporation to seek approval of the said Industrial Tribunal. In the absence of such an approval not being granted by the Tribunal. Thereof, it has to be held that such order of dismissal passed against petitioners as nonest and not enforceable in law.

RE; W.P. 47896/2011 c/w W.P. 10333/2012 -

20. The Labour court on the basis of the pleadings had framed live issues and issue No. 3 related to the order of dismissal being void ab initio on account of management-corporation not seeking approval u/s - of the Industrial Disputes Act, 1947 and same came to be answered in the affirmative and against the management by relying upon the pay slips of the workman namely Exhibit W-2 and W-3 which reflected that management had deducted Rs. 5/-from the wages of the workman towards KSRTC Staff and Workers Union subscription and correctness of the said document not being disputed by the corporation. The Labour court has also held that issue involved in I.D. 148/2005 has a direct bearing on the workman in as much as if said reference is allowed workman would be benefited and if rejected it would affect the workman and as such the management ought to have obtained approval from the Tribunal by filing a application u/s -. In view of the finding given by this court in W.P. 24118-120/2009 hereinabove the order of the Labour court dated 13.05.2011 Annexure-G is not liable to be interfered to the extent of reinstating the workman into service to the same old post which he was holding as on the date of dismissal order as directed by the Labour court and as such writ petition filed by the corporation is liable to be rejected. However, in so far as the writ petition 10333/2012 filed by the workman challenging the denial of 50% back wages by the Labour court is liable to be interfered by setting aside the order of the Labour court dated 13.05.2011 (Annexure-A in W.P. 10333/2012) and directing the respondent -management to pay 100% back wages and the award of the Labour court on all other aspects is hereby affirmed.

RE: W.P. 3729/2012 -

21. In the instant case the respondent-workman contended in his evidence tendered before the Labour court at Paragraph 5 that action of the corporation in dismissing the workman from service is bad in law since management had not obtained approval from the Industrial Tribunal, Bangalore in dispute I.D. 148/2005 which had been raised by KSRTC Staff and Workers Union of which the workman claimed to be a member and had produced copy of the order passed in I.D. 148/2005. There is not even a suggestion in the cross examination of the workman on this issue by the management-corporation by suggesting that workman was not a member of the Union. Thus, corporation without filing a petition seeking approval of the Industrial Tribunal, Bangalore in pending I.D.

148/2005 had proceeded to dismiss the respondent-workmen on 25.05.2007 as such the order of dismissal is nonest and interference made by the Labour court in setting aside the said order of dismissal dated 25.05.2007 does not call for interference. In view of the finding given by this court in W.P. 24118-120/2009 hereinabove the order of the Labour court dated 05.07.2011 Annexure-M cannot be interfered with.

RE: W.P. 6016/2012 -

22. The Labour court on the basis of the pleadings of the parties had framed four issues initially and there afterwards an additional issue came to be framed which related to the order of dismissal being nonest on account of management-corporation not seeking approval u/s - of the Industrial Disputes Act, 1947 and same came to be answered in the affirmative and against the management. It has been held therein that contention raised by the workmen about the fact that he was a member of the KSRTC Staff and Workers Union not being disputed by the corporation, the plea of the workman deserves to be accepted by relying upon the Judgment of the Hon''ble Apex Court in Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd., (referred to by me in W.P. 24118-120/2009) and held that order of dismissal is nonest. In view of the finding given by this court in W.P. 24118-120/2009 hereinabove the order of the Labour court dated 14.10.2011 Annexure-F cannot be interfered with.

RE.W.P. 6060/2012 -

23. The Labour court on the basis of the pleadings of the parties framed an additional issue which related to the order of dismissal being nonest on account of management-corporation not seeking approval u/s - of the Industrial Disputes Act, 1947 and same came to be answered in the affirmative and against the management. It has been held therein that contention raised by the workmen about the fact that he was a member of the KSRTC Staff and Workers Union though disputed by the corporation same was not proved and as such it held the plea of the workman deserves to be accepted by relying upon the Judgment of the Hon''ble Apex Court in Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd., (referred to by me in W.P. 24118-120/2009) and held that the order of dismissal is nonest. In view of the finding given by this court in W.P. 24118-120/2009 hereinabove the order of the Labour court dated 24.10.2011 Annexure-C cannot be interfered with.

RE:W.P. 504/2012 -

24. Before the Labour court in I.D. No. 24/2009 workman contended in paragraph 3 of the claim statement that order of dismissal is bad in law on the ground that dispute raised by KSRTC Workers Federation relating to charter of demand was pending adjudication on the file of the Presiding Officer, Industrial Tribunal, Bangalore in I.D. 148/2005 and the corporation had not obtained approval from the Industrial Tribunal for dismissing the petitioner from service and as such it was contended there has been non compliance of Section - and

hence the order of dismissal is bad in law. Said contention has been reiterated by the workman in his evidence at paragraph 3 and no suggestion is made in the cross examination of the workman to the effect that he was not a member of the said union. Though respondent -corporation denied this fact in their counter statement and evidence, such contention has remained as a plea without proof. Hence, in this background it is to be held petitioner being the member of the staff and workers Federation which union had raised a dispute in I.D. 148/2005 and same was pending before the Industrial Tribunal, Bangalore and as such it was incumbent upon the corporation to seek approval of the said Industrial Tribunal for dismissing the petitioner. In the absence thereof, it has to be held that such order of dismissal dated 27.12.2008 passed against petitioner as nonest and not enforceable in law. In view of the same the award dated 24.03.2011 passed in KID. NO. 24/2009 by Labour Court, Hubli, Annexure-E is liable to be quashed by holding that petitioner is entitled to all the consequential benefits including 100% back wages and continuity of service.

RE: W.P. 10219/2012 -

In the instant case a plea was raised by the workman about the pendency of the dispute I.D. 148/2005 before the Industrial Tribunal, Bangalore, which had been filed by the KSRTC Staff and Workers Federation and respondent -corporation had not obtained the approval of the Tribunal by filing a petition u/s - of the Industrial Disputes Act, 1947 and as such the order of dismissal is nonest. Though, Labour Court noticed such a plea having been raised by the workman in paragraph 8 of the impugned order, surprisingly it has not framed any issue in this regard and there being no dispute with regard to the fact that as on the date of order of dismissal dated 25.02.2007 was passed against the workman the dispute namely reference 148/2005 was pending before the Industrial Tribunal, Bangalore and as such management ought to have sought for approval of its action from the Tribunal in I.D. 148/2005. It is not the case of the corporation that such application was filed and approval obtained. In the absence thereof this court has to hold the order of dismissal dated 25.02.2007 passed against the petitioner- workman is bad in law and nonest for want of obtaining the approval by filing a petition u/s - in reference I.D. 148/2005 which was pending. Hence, the order of the Labour court awarding 50% back wages only deserves to be modified and it is ordered that petitioner would be entitled for 100% back wages. To the said extent award of the Labour court stands modified.

In the result, following order is passed:

ORDER

1. W.P. Nos. 24118-120/2009 are hereby allowed and award dated 23.06.2009 passed by III Additional Labour court, Bangalore in I.D. No. 36, 50 and 51/2006 Annexure-M is hereby quashed. Respondent-corporation is directed to reinstate the petitioners to their original posts held by them with 100% back wages, continuity of service and all other consequential benefits.

2. W.P. No. 47896/2011 is hereby dismissed and the connected writ petition filed by the workman in W.P. 10333/2012 is hereby allowed and the order of the Labour court denying 50% back wages is modified and it is hereby ordered that petitioner-workman is entitled for 100% back wages and award of the Labour court passed in I.D. 78/2009 on all other aspects remains undisturbed.

3. W.P. 3729/2012 filed by the corporation is hereby dismissed. W.P. 10219/2012 filed by the workman is hereby allowed and the order of the Labour court denying 50% back wages is modified and it is hereby ordered that petitioner-workman is entitled to 100% back wages and award of the Labour court passed in I.D. 34/2007 on all other aspects remains undisturbed.

4. W.P. 6016/2012 and W.P. 6060/2012 filed by the corporation are hereby dismissed.

5. W.P. 504/2012 filed by the workman is hereby allowed and the award of the Labour court passed in KID. NO. 24/2009 dated 24.03.2011 Annexure-E is hereby quashed and claim petition KID No. 24/2009 is hereby allowed and order of dismissal dated 27.12.008 passed against the petitioner -workman is set aside and respondent-management is directed to reinstate the petitioner-workman into service with full back wages, continuity of service and all other consequential benefits.

6. No order as to costs.