

(2015) 08 KAR CK 0197

In the Karnataka High Court

Case No : Writ Appeal No. 200616 of 2014 (L-KSRTC)

The Divisional Controller NEKRTC, Bidar Division

APPELLANT

Vs

Venkat

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 31(1), 33, 33(2)(b), 33A

Citation : (2015) 4 AKR 857 : (2016) LabIC 283

Hon'ble Judges : H.G. Ramesh, J;A.V. Chandrashekara, J

Bench : Division Bench

Advocate : Deepak Vishnu Barad, for the Appellant; Krupa Sagar Patil, Advocates for the Respondent

Final Decision : Dismissed

Judgement

H.G. Ramesh, J.

(i) Whether the Labour Court or any adjudicating authority, before whom an order of dismissal or discharge of a workman is challenged, has jurisdiction to adjudicate as to whether the order contravened Section 33 of the Industrial Disputes Act, 1947 ("the Act")?

(ii) Whether the concerned Authority referred to in Section 33A of the Act only has the jurisdiction to adjudicate as to whether an order of dismissal or discharge of a workman contravened Section 33 of the Act?

1. These are the two questions that arise for determination in this intra court appeal presented by North Eastern Karnataka Road Transport Corporation (NEKRTC). We have answered the first question in the affirmative, and, consequently, the second question in the negative.

2. There is a delay of 806 days in filing this appeal. Accepting the cause shown, the delay in filing the appeal is condoned. I.A. No. 1/2014 is allowed accordingly. By consent of learned counsel on both sides, the appeal is heard on merits and is

being disposed of by this judgment.

3. This appeal is directed against the order dated 14.08.2012 passed by a learned Single Judge of this Court in Writ Petition No. 83808/2011. The writ petition was filed by the appellant-NEKRTC against the award dated 05.02.2011 passed by the Labour Court, Gulbarga, in Ref. No. 20/2009. The Labour Court, though found that the respondent who was working as a conductor with the appellant-Corporation had remained unauthorisedly absent for a period of 105 days from 28.9.2003 to 1.1.2004, had set aside the order of dismissal dated 30.09.2007 by the aforesaid award on the ground that the punishment of dismissal was disproportionate to the misconduct proved. The Labour Court had directed reinstatement of the respondent-workman into service with full backwages and continuity of service.

4. By the impugned order, the learned Single Judge has affirmed the award of the Labour Court except to the extent of reducing the backwages from 100% to 25%.

5. An industrial dispute in I.D. No. 148/2005 was pending before the Industrial Tribunal as on the date of dismissal of the respondent-workman. The employer had not obtained approval from the Industrial Tribunal for the aforesaid order dated 30.09.2007 dismissing the respondent from service. The learned Single Judge, while affirming the award of the Labour Court directing reinstatement of the respondent into service, took note of the aforesaid non-compliance of the proviso to Section 33(2)(b) of the Act by the appellant-employer. It is relevant to refer to the following reasoning in the impugned order of the learned Single Judge:

"3. It is not in dispute that in I.D. No. 148/2005 pending on the file of the Industrial Tribunal, Bangalore, the Charter of Demands raised by the KSRTC Staff and Workers Federation is pending. Petitioner herein is a concerned workman. The action of the respondent Corporation in having not sought approval of termination of the petitioner from service by filing an application under Section 33(2)(b) of the Act is void and inoperative in view of the law declared by the Apex Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, AIR 2002 SC 643 : (2002) 92 FLR 667 : (2002) 1 JT 182 : (2002) LabIC 513 : (2002) 1 LLJ 834 : (2002) 1 SCALE 190 : (2002) 2 SCC 244 : (2002) 1 SCR 284 : (2002) 1 SCT 966 : (2002) 2 SLJ 410 : (2002) 1 UJ 576 : (2002) AIRSCW 249 : (2002) 1 Supreme 181 . This Court in identical circumstances in W.P. No. 60395/2012 vide order dated 13.07.2012 directed reinstatement and other benefits."

6. In support of the appeal, learned counsel for the appellant-Corporation contended that the respondent-workman ought to have availed of the remedy provided under Section 33A of the Act for contravention of Section 33 by the appellant-employer, and, therefore, the learned Single Judge should not have examined as to whether the dismissal order dated 30.09.2007 contravened

Section 33 of the Act. In other words, his contention is that, only the concerned authority under Section 33A of the Act has jurisdiction to adjudicate as to whether an order of dismissal of a workman contravened Section 33 of the Act. In support of his contention, he relied on a judgment of the Supreme Court in Rajasthan State Road Transport Corporation and Another Vs. Satya Prakash, (2014) 2 AD 230 : (2013) 137 FLR 1035 : (2013) 7 JT 121 : (2013) LabIC 2875 : (2013) LLR 787 : (2013) 6 SCALE 654 : (2013) 9 SCC 232 : (2014) 1 SCC(L&S) 251 : (2013) 3 SCT 455 : (2013) AIRSCW 3611 .

7. In our opinion, the impugned order of the learned Single Judge is in conformity with the law laid down by a five Judge Bench of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, AIR 2002 SC 643 : (2002) 92 FLR 667 : (2002) 1 JT 182 : (2002) LabIC 513 : (2002) 1 LLJ 834 : (2002) 1 SCALE 190 : (2002) 2 SCC 244 : (2002) 1 SCR 284 : (2002) 1 SCT 966 : (2002) 2 SLJ 410 : (2002) 1 UJ 576 : (2002) AIRSCW 249 : (2002) 1 Supreme 181 . It is relevant to refer to the following observations made therein:

"14. 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 under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2)(b).

15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceedings by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an

approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.

18. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of *Strawboard Manufacturing Co. Vs. Gobind*, AIR 1962 SC 1500 : (1962) 1 LLJ 420 : (1962) 3 SCR 618 Supp and *Tata Iron and Steel Co. Ltd. Vs. S.N. Modak*, AIR 1966 SC 380 : (1965) 11 FLR 61 : (1965) 2 LLJ 128 : (1965) 3 SCR 411 and further state that the view expressed in *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*, AIR 1978 SC 995 : (1978) 36 FLR 383 : (1978) LabIC 693 : (1978) 2 LLJ 1 : (1978) 2 SCC 144 : (1978) 3 SCR 370 on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly.

19. In these appeals, Respondent 1 was employed as Clerk-cum-Cashier with the appellant. He was dismissed from service. As certain proceedings were pending before the Industrial Tribunal, Jaipur, and application seeking approval of the Tribunal for the said dismissal was submitted by the appellant before the Tribunal under Section 33(2)(b). The said application was contested on various grounds by the respondent including that the appellant-Bank had failed to comply with the provisions of Section 33(2)(b) as salary for one month was not paid. The Tribunal, on facts, found that the appellant failed to comply with the provisions of Section 33(2)(b) and in that view dismissed the application. The appellant challenged the order of the Tribunal before the High Court in Writ Petition No. 666 of 1980. The same was dismissed concurring with the order passed by the Tribunal.

20. In the view we have taken, the contentions raised in these appeals do not help the appellant. We find no merit in these appeals. Consequently, these are dismissed. No costs."

(Underlining supplied)

8. *Rajasthan State Road Transport Corporation and Another Vs. Satya Prakash*, (2014) 2 AD 230 : (2013) 137 FLR 1035 : (2013) 7 JT 121 : (2013) LabIC 2875 : (2013) LLR 787 : (2013) 6 SCALE 654 : (2013) 9 SCC 232 : (2014) 1 SCC(L&S) 251 : (2013) 3 SCT 455 : (2013) AIRSCW 3611 which is relied on by the appellant's counsel has no application to this case, as in the present case, no complaint was filed by the respondent under Section 33A of the Act and no adjudication of the complaint under Section 33A of the Act, as made in *RAJASTHAN SRTC*, was made in the present case. It is relevant to refer to the following observations made in *RAJASTHAN SRTC*:

"23. In the present case, the Tribunal accepted that during this very short span of service as a daily wager the respondent had committed the misconduct which had been duly proved. Having held so, the Tribunal was expected to dismiss the

complaint filed by the respondent. It could not have passed the order of reinstatement with continuity in service in favour of the respondent on the basis that initially the appellant had committed a breach of Section 33(2)(b) of the Act. It is true that the appellant had not applied for the necessary approval as required under that Section. That is why the complaint was filed by the respondent under Section 33-A of the Act. That complaint having been filed, it was adjudicated like a reference as required by the statute. The same having been done, and the misconduct having been held to have been proved, now there is no question to hold that the termination shall still continue to be void and inoperative. The de jure relationship of employer and employee would come to an end with effect from the date of the order of dismissal passed by the appellant. In the facts of the present case, when the respondent had indulged in a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service. The learned Single Judge of the High Court as well as the Division Bench have fallen in the same error in upholding the order of the Tribunal."

(Underlining supplied)

RAJASTHAN SRTC does not say, that the legal forum, before whom the order of dismissal of a workman is challenged, is not empowered to examine as to whether the order of dismissal contravened Section 33 of the Act.

9. Certain observations made by a three Judge Bench of the Supreme Court in "Engineering Laghu Udyog Employees" Union Vs. The Judge, Labour Court and Industrial Tribunal and Another, (2004) 1 LLJ 1105 : (2004) 1 SCALE 666 : (2003) 12 SCC 1 : (2004) SCC(L&S) 974 : (2003) 6 SCR 253 Supp : (2004) 2 UJ 783 in the context of Section 33 of the Act require to be noticed:

"13. When in terms of the proviso appended to clause (b) of sub-section (2) of Section 33 of the Act, an approval is sought for and is refused, the order of dismissal becomes void. If an approval is not obtained, still, the order of punishment cannot be given effect to. It is, therefore, not correct to contend that the Tribunal in a reference under Section 10 of the Act, when passes an order recording a finding of misconduct, brings life into the dead. Unfortunately, the Court did not take notice of the binding decisions in Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, AIR 1965 SC 1803 : (1965) 11 FLR 112 : (1965) 2 LLJ 162 : (1965) 3 SCR 588 and The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, AIR 1973 SC 1227 : (1973) 26 FLR 359 : (1973) 1 LLJ 278 : (1973) 1 SCC 813 : (1973) 3 SCR 587 .

14. We may further notice that P.H. Kalyani Vs. Air France Calcutta, AIR 1963 SC 1756 : (1963) 1 LLJ 679 : (1964) 2 SCR 104 has also recently been followed by another Constitution Bench in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, AIR 2002 SC 643 : (2002) 92 FLR 667 : (2002) 1 JT 182 : (2002) LabIC 513 : (2002) 1 LLJ 834 : (2002) 1 SCALE 190 : (2002)

2 SCC 244 : (2002) 1 SCR 284 : (2002) 1 SCT 966 : (2002) 2 SLJ 410 : (2002) 1 UJ 576 : (2002) AIRSCW 249 : (2002) 1 Supreme 181 ."

10. In *Blue Star Employees Union Vs. Ex. Off. Principal Secy. To Government and Another*, AIR 2000 SC 3110 : (2000) 87 FLR 509 : (2000) 1 JT 70 Supp : (2000) 6 SCALE 483 : (2000) 8 SCC 94 : (2000) SCC(L&S) 1073 : (2000) 3 SCR 403 Supp : (2000) AIRSCW 3464 : (2000) 6 Supreme 363 , it is stated at para 6 that any observation made in a complaint proceeding under Section 33A of the Act, on the merits of the order of discharge or dismissal, is to be treated only as an obiter.

11. In our opinion, the Labour Court or any adjudicating authority, before whom an order of dismissal of a workman is challenged, has jurisdiction to examine as to whether the order of dismissal contravened Section 33 of the Act. In such a circumstance, it is not necessary for a workman to invoke Section 33A of the Act. However, the workman is also entitled to make a complaint under Section 33A of the Act regarding contravention of Section 33, to the authority before whom the proceeding referred to in Section 33 is or was pending.

12. In view of the above, we are unable to accept the contention urged by the learned counsel for the appellant, as a proceeding relating to an industrial dispute was admittedly pending as on the date of dismissal of the respondent. The fact that an industrial dispute in I.D. No. 148/2005 was pending as on the date of ordering dismissal of the respondent was not disputed before the learned Single Judge. In this appeal also, counsel appearing for the appellant fairly did not dispute this fact. Admittedly, the appellant had not filed any application under the proviso to Section 33(2)(b) of the Act before the Industrial Tribunal for approval of the order dated 30.09.2007 dismissing the respondent-workman. In other words, the order of dismissal dated 30.09.2007 contravened Section 33 of the Act is not in dispute. Hence, on the facts of the case, the learned Single Judge is justified in holding that the order of dismissal of the respondent-workman also contravened Section 33 of the Act. Accordingly, we find no error in the order of the learned Single Judge to warrant interference. The appeal is devoid of merit and is accordingly dismissed. Appeal dismissed.

Appeal dismissed.