

(2012) 01 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No. 1830 of 2007

The Management, Coimbatore District Central Cooperative
Bank Ltd.

APPELLANT

Vs

P. Thangamuthu and The Presiding Officer, Labour Court,
Coimbatore

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

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

Citation : (2012) 01 MAD CK 0150

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Anbarasan, for the Appellant; R. Sunilkumar for R. 1, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. The Petitioner is the Coimbatore District Central Cooperative Bank Limited. In this writ petition, they have challenged the order passed by the

Labour Court in C.P.No. 497 of 2003 dated 21.6.2006. By the impugned order, the Labour Court computed a sum of Rs. 1,77,571/- as due and

payable to the first respondent workman. Aggrieved by the same, the writ petition came to be filed. The writ petition was admitted on 19.1.2007.

Pending the writ petition, this Court directed the Management to deposit 50% of the amount ordered by the Labour Court to the credit of the

Claim Petition within four weeks. It is claimed that the said amount has been deposited subsequently. Thereafter, the workman filed M.P.No. 2 of

2007 seeking to vacate the interim order. When that petition came up on 11.4.2007, this Court permitted the workman to withdraw the amount

already deposited in the Labour Court and the interim order, in other respect, was made absolute and the main writ petition was directed to be listed for final disposal.

2. The short question that arises for consideration is whether the Labour Court was correct in computing the amount in favor of the workman.

3. It is seen from the records that the workman was dismissed from service by order dated 30.6.2001. Even before dismissal, the Union, to which

he belongs, has raised a dispute with the Conciliation Officer on several demands. The demands raised by the Union include the suspension

pending enquiry made against the first respondent workman. Subsequently, it transpires that the workman was reinstated by order dated 1.7.2002.

But for the period from 30.6.2001 to 1.7.2002, he was not paid wages though he was restored to service. It is claiming wages for the said period,

the workman filed a Claim Petition u/s 33C[2] of the Industrial Disputes Act, before the Labour Court, the second respondent herein. The said

Claim Petition was taken up on file as C.P.No. 497 of 2003 and notice was issued to the Management.

4. The Management filed a counter statement stating that the Claim Petition u/s 33C[2] is not maintainable in the absence of any pre-existing right

in favor of the Management and reliance was placed upon a judgment of this Court in 2003 (2) LLN 93 R.D. Rajendran and another vs. Hi Brite

Lamps Ltd. and another. In that case, this Court held that for the purpose of claiming wages or any amount due, there must be a pre-existing right

on the part of the workman. Similarly, reliance was placed by the Management on the judgment of the Supreme Court in State of Uttar Pradesh

and another v. Brijpal Singh reported in 2005 LLR 1191. However, the Labour Court was persuaded to accept the stand of the workman

wherein it placed reliance upon the Constitution Bench of the Supreme Court reported in 2002 (1) LLN 639 Jaiur Zila Sahakari Bhoomi Vikas

Bank Ltd. v. R.G. Sharma. In that case, the Supreme Court overruled its previous decision reported in 1978 (1) LLN 655 Punjab Beverages

Private Ltd., Chandigarh v. Suresh Chand and another. The earlier view taken was that in case of contravention of Section 33[2][b] of the

Industrial Disputes Act, the workman can only seek for a complaint u/s 33A of the Industrial Disputes Act. Even in that case, the appropriate

authority hearing the complaint will have to go into the merits of the issue relating to the order of dismissal or other alteration of the conditions of

service. But, however, the Supreme Court in *Jaiur Zila Sahakari Bhoomi Vikas Bank Ltd. v. R.G. Sharma*, cited supra, held that a requirement u/s

33[2] is mandatory and any violation will result the action of the employer being held to be void ab initial and in such circumstances, it is

unnecessary on the part of the workman to file a complaint before any forum, as a void order can never be cured and the workman is entitled for

wages as if it has not been dealt with by the management in the manner alleged by the employee. In this context, it is necessary to refer to the

following passages:

13. The proviso to Section 33(2)(b), 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 33(2)(b), 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 the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied

if an order of discharge or dismissal passed u/s 33(2)(b) 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 33(2)(b) 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 33(2)

(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labor practice by the employer during

the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of

Section 33(2)(b) 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 33(2)(b) 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 labor

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 the order of discharge or dismissal never had been passed. The order of dismissal or

discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the 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 the statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), 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.

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 u/s 33-A, cannot be accepted. In our view, not making an application u/s 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 u/s 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 u/s 33-A notwithstanding the

contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceedings by making a complaint u/s 33-A or

to raise another industrial dispute or to make a complaint u/s 31(1). Such an approach destroys the protection specifically and expressly given to

an employee under the said proviso as against possible victimization, unfair labor practice or harassment because of pendency of industrial dispute

so that an employee can be saved from hardship of unemployment.

[emphasis added].

5. Under such circumstances, there is no case made out to interfere with the impugned order. The writ petition stands dismissed. The

petitioner/Management is directed to pay the balance 50% to the workman directly without driving him to further course of action, to recover the

amount. This direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this order. The parties are

directed to bear their own costs.