Before Ashutosh Mohunta & Surya Kant, JJ

SRI GURU RAM DAS INSTITUTE OF MEDICAL SCIENCES & RESEARCH—*Petitioners*

versus

P.O. INDUSTRIAL TRIBUNAL, PUNJAB & ANOTHER—*Respondent*

C.W.P. 2432 of 2003

2nd April, 2004

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Ss. 10(1)(d), 33-A & 33(1)—Industrial dispute u/s 10(1)(d) pending adjudication between Union & the Management of an Institute—Termination of services of an active worker of the Union by the management on allegations of misconduct during pendency of the reference—On a complaint u/s 33-A made by workman, Tribunal directing reinstatment with all consequential benefits—Challenge thereto—Direct nexus between the nature of dispute pending adjudication before the Tribunal and the order of dischange from service—Neither any domestic enquiry held nor any express permission in writing taken from the Tribunal before passing the order as required u/s 33(1) of the 1947 Act—Order of termination is punitive in nature based upon a specifically attributed misconduct—Tribunal has jurisdiction u/s 33-A to adjudicate on the complaint made by workman during pendency of reference—Management's petition liable to be dismissed.

Held, that the objective behind section 33 of the Act is to ensure a fair and satisfactory inquiry of the industrial dispute undisturbed by any action on the part of the employer or the employee which would create fresh cause for disharmony between them. It is a legislative attempt to maintain *status quo* between the parties. While examining the scope of Section 33, the employer, therefore, cannot be heard to say that the workman concerned, in respect of whom protection u/s 33 has been provided must be a workman "directly" or "immediately" concerned with the pending dispute.

(Para 14)

Further held, that there is a direct nexus between the nature of dispute which was pending adjudication before the learned Tribunal and the impunged order of discharge from service passed by the petitioner-management during the pendency of the dispute. That being so, we find that by terminating the services of the workman not only the conditions of his service were prejudicially altered during pendency of the industrial dispute but it also militated against section 33(1)(b) of the Act. Further, even the discharge simpliciter of the workman was made by the petitioner-management with clear intent to render the pending reference infructuous. The impugned action of the management was, therefore, directly connected with the pending dispute inviting protective umbrella of Section 33(1)(b) of the Act to the workman concerned. It is the conceded position that no express permission in writing was taken from the learned Tribunal before passing the order terminating services of the workman. Thus, the action of the petitioner-management in retrenching the workman held to be in violation of Section 33(1) of the Act. Though the order of termination dated 1.12.1999 has been camouflaged as an order of discharhge but in true sense it is an order of punitive discharge based upon a specifically attributed misconduct. It is the admitted position that no domestic inquiry was held before passing the impugned order.

(Para 16)

Gurminder Singh, Advocate, for the petitioner.

Vanita Sapra Kataria, Advocate for respondent No. 2.

JUDGMENT

SURYA KANT, J.

(1) This order will dispose of Civil Writ Petitions No. 2417, 2432 and 2468 of 2003 as common questions of law and facts have arisen for consideration in these cases. For the sake of brevity, facts are taken from CWP No. 2432 of 2003.

(2) The challenge herein lies to an order dated February 6, 2002 passed by the Industrial Tribunal, Punjab by invoking its power under section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred as the Act). The learned Tribunal held that termination of services of the workman (Respondent No. 2), being

violative of Section 33 of the Act, cannot sustain and has directed the Petitioner-management to take the workman back on duty, with all consequential benefits.

(3) The bare facts required to be narrated are that Respondent No. 2 was employed as a Laboratory Technician in Sri Guru Ram Das Institute of Medical Sciences & Research, Amritsar, namely the Petitioner-management initially for a period of six months,—*vide* an order dated 29 August, 1997. The afore-mentioned period of employment, however, was extended from time to time until,—*vide* an order dated 1st December, 1999 (Annexure R-2) services of the Respondent No. 2 were terminated with effect from 31 December, 1999 by not extending the term of his employment allegedly on the ground that "he was neither obedient nor was taking interest in his work". Aggrieved by the afore-mentioned order (Annexure R-2), the Respondent-workman filed complaint No. 106/1 of 1999 before the Industrial Tribunal, Punjab, *inter-alia,* on the ground that although he was a employee regular yet his services were terminated and one Ms. Maninder Kaur was employed in his place, merely because he was an office bearer of the employees union and was instrumental in getting an industrial dispute raised by the union under section 10 (1)(b) of the Act which was pending adjudication before the learned Tribunal; that his services were terminated as a punitive measure to prevent the union and its office bearers from pursuing the afore-mentioned reference, therefore, the action of the Petitioner-management in terminating the services was in contravention to Section 33 of the Act; the Tribunal having held that the industrial dispute raised by the Union was referred to it for adjudication on 22 September, 1999 and as such, the services of the workman could not have been terminated on December 31, 1999 on account of an alleged misconduct connected with the pending dispute without prior permission of the Tribunal, therefore, the Petitioner-management was directed to take the Respondent-workman on duty with all conseqential benefits. Aggrieved by the afore-mentioned award dated February 6, 2002, the Petitioner-management has approached this Court.

(4) Upon notice, written statement has been filed on behalf of the workman (Respondent No. 2), *inter alia,* pleading that the Petitioner—Institute was originally established by Shiromani Gurudwara Parbandhak Committee which is a statutory body under

the provisions of Sikh Gurudwara Act, 1925; the name of the Hospital was changed in the year 1980 and a trust was created to manage the affairs of the hospital; the Institute is approved by the Medical Council of India. It was originally affiliated to Guru Nanak Dev University, Amritsar but presently it is affiliated to Baba Farid University of Health and Sciences, Faridkot; there are more than 700 workmen employed in the Institute and they have formed a union known as Medical Employees Association (Regd.). The union raised an industrial dispute to the learned Labour Court for adjudication under Section 10(1)(d) of the Act. Respondent-workman had been a Cashier as well as an active worker of the union; he along with his co-workers raised the demand for regularisation of their services and granting them faciiities like grade etc. as were being paid to the regular employees; however, in order to vicitimise and isolate the office bearers and active members of the Association and also with a view to discourage other members from pursuing the pending reference, the Petitioner-management terminated the services of its President, General Secretary and one active member of the union; Respondent No. 2 was one of them; since the services were terminated during the pendency of the reference which related to their service conditions and other benefits, an application under Seciton 33-A of the Act was moved; that on November 20, 1999, the Petitioner-management had passed a resolution to regularise services of those *ad hoc* employees who had worked for more than 2 years yet instead of regularising services of Respondent No. 2, the same were dispensed with; the misconduct on the basis of which his services were terminated was directly connected with the pending dispute; that the order terminating his services was stigmatic in nature and the same having been passed without holding an inquiry as also without seeking prior approval of the Industrial Tribunal/Labour Court, the same has rightly been set aside,—*vide* the impugned award.

(5) We have heard Shri Gurminder Singh, learned counsel for the Petitioner-management, Mrs. Vanita Sapra Kataria, learned counsel for the Respondent-workman and have perused the record.

(6) Shri Gurminder Singh, learned counsel for the Pertitioner, has raised two-fold submission against the impugned award dated February 6, 2002, namely, the Petitioner-management was proceeded against *ex parte* by the learned Tribunal and thus no opportunity was

given to it either to lead evidence or to defend itself and that the learned Tribunal erroneously relied upon Sections 33 and 33-A of the Act as the order of termination dated December 1, 1999 had absolutely no connection with the pending dispute, therefore, there was no violation of Section 33(1) of the Act warranting adjudication of any complaint under section 33-A(b) of the Act.

(7) In order to appreciate the first submission of Shri Gurminder Singh, we find that the pleadings are completely laconic as well as, vague; not a word has been stated in the Writ Petition as to what prevented the Petitioner-management to appear before the learned Tribunal on June 4, 2001 when it was proceeded against *ex parte* or to join the proceedings thereafter. In the absence of any material on record, not to talk of sufficient material warranting interference in the exercise of discretionary jurisdiction of this Court, we have no hesitation in holding that the impugned award dated February 6, 2002 (Annexure P-1) cannot be said to have been passed without giving sufficient opportunity to the Petitioner-management to defend itself.

(8) So far as the second contention, namely, that the impugned award is beyond the scope of Section 33(1) read with Section 33-A of the Act, it will be appropriate to reproduce the afore-mentioned provisions which read as under :—

> "33. Conditions of service etc., to remain unchanged under certain circumstances during pendency of proceedings— (1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—
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> (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
>
> (b) for any misconduct connected with the dispute, discharge or punish whether by dismissal or

otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) to (5) xxx xxx xxx xxx xxx

"33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding—Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing in the prescribed manner—

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

(9) Reading of Section 33 makes it aptly clear that if proceedings in respect of an industrial dispute are pending before an arbitrator, Labour Court/Tribunal and/or National Tribunal, the employer is prohibited to alter the conditions of service prejudicial to the workman in regard to any matter connected with the pending dispute. The employer is also prevented to discharge or punish, whether by dismissal or otherwise, any workman concerned in the dispute for any misconduct connected with the pending dispute except with the express permission in writing of the authority before which the proceedings are pending. The salutary object behind the embargo created upon an employer under section 33(1) of the Act is designed with dual intention, i.e., firstly to protect the workman concerned during the course of conciliation, arbitration or adjudication of pending proceedings from any punitive action of the employer intended to be taken to harass

and vicitimize him and, secondly, to maintain industrial peace so that the strained relations between the management and its workman are not deteriorated further. While the afore-mentioned provision permits the employer to alter the conditions of service or to discharge or punish a workman by way of dismissal or otherwise on account of a misconduct with the express permission in writing of the authority before whom the proceedings are pending, it also requires that the occasion to seek such permission would arise only if the conditions of service of the workman are sought to be altered to his prejudice when such conditions of service are **"connected with the pending dispute"** or when a workman is sought to be discharged or punished for any misconduct **"connected with the dispute"** and **the workman has also a concern in such dispute.** The word "concerned in" has been defined by the Apex Court in the case of **Sachidananda Banerjee** *versus* **Sitaram Agarwala & another (1),** to mean as—interested in, involved in, mixed up with".....

(10) Coming to Section 33-A of the Act, the plain language of the provision informs in unequivocal terms that if the employer has violated provisions of Section 33 of the Act, the workman is entitled to file a complaint and the Arbitrator/Labour Court/Tribunal and/or the 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"** (emphasis applied).

(11) Thus, in a given case if the Labour Court/Tribunal finds that the employer has acted in contravention to Section 33 of the Act, say in discharging a workman from service, and a complaint to this effect is filed before it, the Labour Court/Tribunal shall proceed and adjudicate the complaint on the premise as if there is a reference before it under section 10(1) of the Act against wrongful retrenchment of the workman.

(12) In the backdrop of the facts of the present case, Shri Gurminder Singh has contended that "the proceedings pending before the learned Tribunal" were related to the following issues :—

1. Whether all the employees of the establishment are entitled to pay scales and allowances equal to that of Guru Nanak Dev University employees ? If so to what relief are the workmen entitled.

(1) AIR 1966 SC 955

2. Whether service conditions are required to be made in the establishment according to University Calender ? If so with what details ?

3. Whether the employees of establishment are entitled to winter and summer uniforms along with allowance ? If so to what relief are they entitled ?

4. Whether the employees of the establishment are entitled to annual increments as per their seniority ? If so to what relief are they entitled ?

5. Whether the rules are required to be framed for promotion in regard to the employees of the establishment ? If so, with what details ?

(13) The Respondent-workman, however, was retrenched by not extending the term of employment, though he was also found "neither obedient nor taking interest in the work" and that the reason for which his services were dispensed with, has absolutely "no connection" with the pending proceedings, therefore, Section 33(1)(a) & (b) of the Act has not at all been violated by the Petitioner-management. On the other hand, Mrs. Kataria has argued that when the action of the management amounts to directly tampering with the claim putforth either by a workman or by the Union in which his interest is also involved and which is still pending adjudication, the affected workman does fall within the ambit of "workman concerned". She has placed reliance upon (i) **Hindustan Copper Ltd.** *versus* **Central Industrial Tribunal, Jaipur, (2),** (ii) **Eastern Plywood Manufacturing Co.** *versus* **Eastern Plywood Manufacturing Co. Workers Union (3),** and (iii) **New India Motors (Private) Ltd.** *versus* **K.T. Morris (4),**

(14) After hearing the learned counsel for the parties, we are of the view that there is no merit in this Writ Petition and the same is liable to be dismissed. The objective behind Section 33 of the Act is to ensure a fair and satisfactory inquiry of the industrial dispute undisturbed by any action on the part of the employer or the employee which would create fresh cause for disharmony between them. It is a legislative attempt to maintain *status quo* between the parties. While examining the scope of Section 33, the employer, therefore,

(2) 1979 Lab. IC 172
(3) (1952) 1 L.L.J. 628
(4) (1960) 1 L.L.J. 551

cannot be heard to say that the workman concerned, in respect of whom protection under Section 33 has been provided must be a workman "directly" or "immediately" concerned with the pending dispute. Such a narrow construction of Section 33 of the Act was held to be defeating the very legislative object by the Hon'ble Supreme Court in the case of **K.T. Thomas** (supra). Their Lordships held that there are several industrial disputes which cannot be raised by an individual workman and can be raised only by a group of workmen or through their union, therefore, the expression "workman concerned in such dispute" could not be limited only to such workmen who are directly concerned in the dispute in question but would include all workmen on whose behalf the dispute has been raised as well as those who would be bound by the award which may be passed in such a dispute.

(15) As far as "connection with the pending dispute" is concerned, we find that the claim of the Respondent-workman is squarely covered by the principles enunciated by the Supreme Court in the case of **The Bhavnagar Municipality** v. **Alibhai Karimbhai and others (5)** In the afore-mentioned case, an industrial dispute was pending between the Bhavnagar Municipality and its workmen before the Industrial Tribunal relating to several demands including the demand for permanent status of the daily rated workers etc. During pendency of the reference, the management retrenched some of the workmen though by complying with Section 25-F of the Act. On a complaint made under Section 33-A, the Tribunal held that Section 33(1)(a) of the Act was contravened by the management, therefore, it directed the reinstatement of the workmen. When the matter was taken to the Apex Court, their Lordships in para 14 of the report held as under :—

> "The character of the temporary employment of the respondents being a direct issue before the Tribunal, that condition of employment, however insecure, must subsist during the pendency of the dispute before the Tribunal and cannot be altered to their prejudice by putting and end to that temporary condition. This could have been done only with the express permission of the Tribunal. It goes without saying that the respondents were directly concerned in the pending industrial dispute. No one can also deny that snapping of the temporary employment of the respondents is not to their prejudice. All the five features adverted to

(5) 1977 Lab. I.C. 834

above are present in the instant case. To permit rupture in the employment in this case, without the prior sanction of the Tribunal will be to set at naught the avowed object of Section 33 which is principally directed to preserve the *status quo* under specified circumstances in the interest of industrial peace during the adjudication. We are, therefore, clearly of opinion that the appellant has contravened the provisions of Section 33(1)(a) of the Act and the complaint under Section 33-A at the instance of the respondents, is maintainable. The submission of Mr. Parekh to the contrary cannot be accepted."

(16) Applying the aforementioned ratio to the facts and circumstances of the present case, we find that in the pending dispute, one of the major issues was related to the entitlement of the workmen for the pay scale and allowances equivalent to their counterparts working in Guru Nanak Dev University. They also sought a direction to the management to lay down their service conditions as per the University Calendar which included conferring the status of regular and/or permanent employee, apart from the relief of annual increments which the workmen could claim only after getting the status of regular employees. The Petitioner-Management, however, shattered their legitimate expectations to claim either of these reliefs by arbitrarily snapping ties of the very relationship of master and servant. How could the claim for laying down the service conditions or grant of annual increments sustain or survive if the workman was not retained in the employment itself? In our view, there is a direct nexus between the nature of dispute which was pending adjudication before the learned Tribunal and the impugned order of discharge from service passed by the Petitioner-Management during the pendency of the aforementioned dispute. That being so, we find that by terminating the services of the workman not only the conditions of his service were prejudicially altered during pendency of the above mentioned industrial dispute but it also militated against Section 33(1)(b) of the Act. Further, even the discharge simpliciter of the workman, in the facts and circumstances of the present case, was made by the Petitioner-management with clear intent to render the pending reference infructuous. The impugned action of the management was, therefore, directly with the pending dispute inviting protective umbrella of Section Section 33(1)(b) of the Act to the workman concerned. It is the

conceded position that no express permission in writing was taken from the learned Tribunal before passing the order terminating services of the workman. Thus, the action of the Petitioner-management in retrenching the workman is held to be in violation of Section 33(1) of the Act. We may add that though the order of termination dated December 1, 1999 (Annexure R-1) has been camouflaged as an order of discharge but in true sense it is an order of punitive discharge based upon a specifically attributed misconduct, namely, that the workman is "neither obedient nor does he take interest in the work". It is the admitted position that no domestic inquiry was held before passing the impugned order. While, we refrain ourselves from expressing any final opinion on the legality of such an order, but it gives a *prima facie* impression that the foundation of the punitive discharge lies on an alleged misconduct which has a connection with the pending dispute as if the Petitioner-Management wanted to convey to the workman that what to talk of claiming the status of a regular employee or the regular pay scale, he, on account of his stigmatic conduct, does not deserve to continue even with his present status. It seems to us that raising of the dispute by the employees union relating to several demands and reference thereof,—*vide* reference No. 106/1 of 1999 for adjudication on September 22, 1999 prompted the management to punish the workman with the impugned order of termination of his services though passed under the garb of "not extending the term of his employment.'

(17) To be fair to Shri Gurminder Singh, learned counsel for the Petitioner-Management, we may mention here that he has placed reliance upon the judgments in (i) **National Engineering Industries Ltd.** *versus* **Hanuman (6),** (ii) **Mahendra Singh Dhantwal** *versus* **Hindustan Motors Ltd. and others (7),** (iii) **O.A. Oommen O.A. Abraham, Bangalore,** *versus* **The Management of Hindustan Aeronautics Ltd. and another (8),** and (iv) **Giovanola-Binny Limited** *versus* **Industrial Tribunal Calicut and another (9).** In **National Engineering Industries Ltd.'s** case (supra), the Hon'ble Supreme Court held that where a standing order provides that workman would lose lien on his appointment if he does not join duty within

(6) AIR 1968 S.C. 83
(7) AIR 1976 S.C. 2062
(8) 1973 Lab. I.C. 1002.
(9) AIR 1969 Kerala 313

certain time after his leave expires, it only means that his service stands automatically terminated when the contingency happens. In the present case, neither provisions of any standing order are in issue nor services of the workman were terminated on account of a contingency like the one stated above. In the case of **Mahendra Singh Dhantwal** *(supra),* their Lordships held that when termination of services of a workman is "simpliciter" or "automatic termination of service" under the conditions of service or under the standing orders, such an action of the management is beyond the scope of Section 33 of the Act. However, in such a case, if a complaint under Section 33-A of the Act is received by the Tribunal, **it is competent to look into the substance of the order notwithstanding the form thereof** (emphasis applied). As already held, the order of termination itself mentions that the services of the workman have been terminated in the present case on account of a specific misconduct as well, therefore, this judgment is distinguishable on facts. In the case of **O.A. Oommen O.A. Abraham** *(supra),* the Mysore High Court held that under Section 33-A of the Act, the Tribunal will not consider the reasonableness of an alteration of the conditions of services of a workman so long so it is in accordance with the standing orders and unconnected with the dispute pending before it. The nature of controversy in the present case is altogether different, therefore, this judgment, too, does not render any kind of help to the Petitioner-Mangement. In the case of **Giovanola-Binny Limited** *(supra),* the Kerala High Court held that if services of a probationer are terminated on the ground of unsuitability a few days after expiry of the probation period, it does not amount to alteration of service conditions and the case will not fall within the ambit of Section 33 of the Act. There can hardly be any dispute with the aforementioned proposition of law but the facts and circumstances in the present case are altogether different.

(18) We are, therefore, of the view that violation of Section 33(1) of the Act having been proved beyond any doubt, the learned Tribunal in exercise of its power under Section 33-A of the Act was fully justified in declaring the order of discharge to be illegal. No fault, therefore, can be found with the impugned award and the same is accordingly upheld. As a consequence thereof, the Writ Petition is dismissed. No costs.

R.N.R.