

CIVIL WRIT.

Before Gosain, J.

THE ORIENTAL TEXTILE FINISHING MILLS.
G.T. ROAD, CHHEHARATA,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS.—*Respondents.*

Civil Writ No. 1154 of 1957

1958

July, 31st

*Industrial Disputes Act (XIV of 1947)—Section 33A—
object of Complaint filed under—Labour Court or Tri-
bunal, whether bound to adjudicate on the merits of the
dismissal.*

Held, that the object of section 33-A of the Industrial Disputes Act, 1947, is to avoid multiplicity of proceedings. Instead of Government making an independent reference and calling upon the Tribunal to adjudicate upon that reference, a suit of summary procedure is provided by which the workman himself, if he objects to the dismissal, can go to the Tribunal and ask the Tribunal to adjudicate upon the dispute between himself and his employer. The fact that the Legislature treats the complaint as if it were a dispute referred to or pending before it, goes to show that the jurisdiction of the Tribunal is not limited merely to consider the question of the contravention of section 33 but to decide on the substantive dispute between the employer and the workman with regard to his dismissal. The complaint filed under this section has to be adjudicated upon by the Tribunal or Labour Court as if it were a dispute referred to or pending before it, in accordance with the provisions of the Act. It is not sufficient for the Labour Court or Tribunal, to quash the dismissal under this section on the short ground that the dismissal has been made contrary to the provisions of section 33. When a complaint under section 33-A is made, the Labour Court or Tribunal are bound to go into two matters, namely.

- (1) Whether dismissal has been made contrary to the provisions of section 33 of the Act, and
- (2) Whether the dismissal is unjustified on its merits.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari be issued quashing the award dated the 27th of November, 1957, which was published in the Punjab Government Gazette, dated the 13th of December, 1957, and quashing the same.

BHAGIRATH DASS and R. SACHER, for Petitioner.

ANAND SWAROOP, for Respondent.

ORDER

GOSAIN, J. The Punjab Government by their notification No. 12003-C-Lab-57/219771, dated the 25th September, 1957, referred to the Labour Court, Amritsar; an industrial dispute between the Oriental Textile Finishing Mills, Chheharta, on the one hand and the workers of the said Mills on the other. During the pendency of the dispute the management of the Mills dismissed an employee of theirs Shri Krishan Lal, respondent No. 3. The aforesaid employee filed a complaint in the Labour Court under section 33-A of the Industrial Disputes Act, 1947, claiming that he had been wrongfully dismissed without previous permission of the Labour Court. By its award, dated the 27th November, 1957, published in the Punjab Government Gazette, dated the 13th December; 1957, the Labour Court held that the complainant Krishan Lal would be deemed to have never been dismissed or discharged and would be entitled to full wages for the period for which he was not given any work. The management of the Mills have come up to this Court under Article 226 of the Constitution of India and have prayed for the issuance of an appropriate writ quashing the said award.

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The main allegation of the petitioners is that the Labour Court was bound to go into the merits of the dismissal and could not pass an order of reinstatement of the dismissed employee simply on the ground that the employee had been dismissed without previous permission of the Labour Court or that he had not been paid one month's wages as required by proviso to sub-section (2) of section 33 of the said Act. No one represented the Punjab State before me and the petition was opposed only by Krishan Lal, respondent No. 3.

Section 33-A of the Industrial Disputes Act, provides—

“Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a (Labour Court, Tribunal or National Tribunal) any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such (Labour Court, Tribunal or National Tribunal) and on receipt of such complaint that (Labour Court, Tribunal or National Tribunal) 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 its award to the appropriate Government and the provisions of this Act shall apply accordingly.”

The complaint filed under this section has to be adjudicated upon by the Tribunal or Labour Court as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act. It is not in my opinion sufficient for the Labour Court or Tribunal to quash the dismissal

under this section on the short ground that the dismissal has been made contrary to the provisions of section 33. When a complaint under section 33A is made, the Labour Court or Tribunal are bound to go into two matters, namely,—

(1) Whether the dismissal has been made contrary to the provisions of section 33 of the Act, and

(2) Whether the dismissal is unjustified on its merits.

It appears that the object of section 33A is to avoid multiplicity of proceedings. Instead of Government making an independent reference and calling upon the Tribunal to adjudicate upon that reference, a more summary procedure is provided by which the workman himself, if he objected to the dismissal can go to the Tribunal and ask the Tribunal to adjudicate upon the dispute between himself and his employer. The fact that the Legislature treats the complaint as if it were a dispute referred to or pending before it, goes to show that the jurisdiction of the Tribunal is not limited merely to consider the question of the contravention of section 33 but to decide on the substantive dispute between the employer and the workman with regard to the dismissal of the workman. When a workman is dismissed in contravention of section 33 of the Industrial Disputes Act, he has two remedies, namely:—

(1) to invoke the provisions of section 31 of the Act and to take proceedings against the employer under the same and,

(2) to make the complaint under section 33A of the Act.

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If he chooses to invoke the provisions of section 31 only an employer can be convicted on the short ground that he has contravened the provisions of section 33. If, however, the workman chooses to avail of the provisions of section 33A, the Tribunal will certainly be bound not merely to find that there has been contravention of section 33 but also to adjudicate upon the merits of the dismissal. If section 33A only meant that the Tribunal would order reinstatement of the workman on the short ground that he had been dismissed in contravention of section 33, the language of the section would have been entirely different and as plain as the language of section 31 is. It would not be necessary in that case to treat the complaint as an industrial dispute referred to the Tribunal. In *Batuk K. Vyas v. Surat Borough Municipality and others* (1), a Division Bench of the Bombay High Court in a somewhat similar case observed:—

“The functions of the Tribunal acting under section 33A in adjudicating upon the dispute and the functions under section 31 of a Criminal Court considering the violation of section 33 are different and the two Tribunals approach the matter from entirely different aspects. A Criminal Tribunal trying the employer who is prosecuted for violating section 33 would confine itself to the sole question as to whether there was a breach of the law. The Industrial Tribunal’s functions under section 33A are different and much wider. Apart from the breach of the law under section 33 for which a penalty is provided, the Tribunal would be concerned with the

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question as to whether on merits the employer was justified in discharging the petitioner or changing the conditions of service to his prejudice."

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Their Lordships of the Supreme Court in *the Automobile Products of India, Ltd. and others v. Rukmaji Bala and others* (1), observed at page 264 as under:—

"It is also clear that under section 33-A of the 1947 Act, the authority is to adjudicate upon the complaint "as if it were a dispute referred to or pending before it" and under section 23 of the 1950 Act, the authority is to decide the complaint "as if it were an appeal pending before it". These provisions quite clearly indicate that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action but also to go into the merits of the complaint and grant appropriate reliefs."

From the above it appears that the Tribunal has not really decided the complaint in a manner warranted by law and this is a patent error which vitiates the award. I would, therefore, order that an appropriate writ be issued quashing the award and enjoining upon the Labour Court to adjudicate the dispute on merits. In the peculiar circumstances of the case I leave the parties to bear their own costs.

B.R.T.