2019 INSC 1147

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8042 OF 2019

[Arising out of Special Leave Petition(C)No. 6371 OF 2019]

John D'Souza ..... Appellants(s)

VERSUS

Karnataka State Road Transport Corporation .....Respondents(s)

JUDGMENT

SURYA KANT, J.

Leave granted.

2. The instant appeal, by special leave, is directed against the judgment and order dated 30th November, 2018 passed by the Division Bench of High Court of Karnataka at Bangalore whereby the intra-Court appeal preferred by the

Karnataka State Road Transport Corporation (in short, `the Corporation') against the order dated 20th September, 2017 of the Learned Single Judge has been allowed and after setting aside the order dated 28th October, 2016 of the First Additional Labour Court, Bangalore, the said Court has been directed to decide afresh application of the Corporation under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short, `the Act') in accordance with the observations made by the Division Bench of the High Court in an earlier order dated 14th July, 2016 passed in W.A. No. 30 of 2015.

3. The question which falls for consideration revolves around the scope and ambit of the enquiry to be held by a Labour Court or Industrial Tribunal while granting or refusing approval for the discharge or dismissal of a workman under Section 33(2)(b) of the Act.

4. The facts giving rise to the present controversy may be briefly noted. The appellant-workman joined the Corporation as a bus conductor on 28th November, 1984. He had been a Union activist and also the General Secretary of the KSRTC and BMTC United Employees Union. The appellant reportedly remained absent from duty since 18th August, 2005 onwards

without prior permission of his superiors or getting his leave sanctioned. The Depot Manager reported the appellant's absence on 25th August, 2005. A notice was sent to him on 5th September, 2005 to resume the duties. The appellant statedly absented himself from duty w.e.f. 18th August, 2005 to 29th October, 2005 for which he was served an article of charges on 23rd June, 2006. He did not submit any reply to the charge sheet, hence the disciplinary authority decided to hold an enquiry. A retired Joint Law Officer of the Corporation was appointed as the Enquiry Officer. The enquiry was held on various dates commencing from 5th September, 1998 till its conclusion on 12th August, 2010. The appellant participated in the enquiry during the time the Management's witnesses were examined and after closure of the evidence of Management he was given an opportunity to produce his witnesses and also the documents for which the enquiry proceedings were adjourned to 28th January, 2010. The appellant, however, sought adjournments on 28th January, 2010; 18th February, 2010; 11th March, 2010; 15th April, 2010; 13th May, 2010; 4th June, 2010; 15th July, 2010; and 12th August, 2010, but still failed to produce any

evidence. The enquiry was eventually closed and report was submitted holding that the charges had been proved. Thereafter a show cause notice dated 21st August, 2010 along with the enquiry findings was served upon the appellant to which he submitted his reply. The disciplinary authority was not satisfied with the explanation furnished by the appellant, hence it passed the order of dismissal from service on 11.10.2010.

5. The past service record of the appellant appears to have weighed in the mind of the disciplinary authority as there were 30 other default charges of one or the other nature and on two previous occasions also, the appellant was dismissed from service though both those orders had been set aside and/or withdrawn.

6. Since an `industrial dispute' in Reference No. 243/2006 in which the appellant was also a concerned workman was pending before the Labour Court-cum-Industrial Tribunal, the Corporation moved an application under Section 33(2)(b) of the Act seeking permission of the Labour Court to effectuate the order of dismissal. It further appears that the appellant meanwhile attained the age of superannuation.

7. The Labour Court formulated the following four issues for its consideration:-

> "1. Whether domestic enquiry held against first party is fair and proper?
>
> 2. Whether the Enquiry Officer is justified in holding that the charges are proved?
>
> 3. Whether the disciplinary authority is justified in dismissing the first party?
>
> 4. To what award or order the parties entitled."

8. The Labour Court after perusing the evidence adduced on Issue No.1 passed an order dated 16th March, 2012 answering Issue No. 1 in `affirmative' and held that the domestic enquiry was conducted in a fair and proper manner. The appellant unsuccessfully challenged that order before the High Court. He thereafter filed SLP(C) Nos. 34485-34486/2013 in this Court, but the matter was rendered infructuous as meanwhile the Labour Court vide its final order/Award dated 6th November, 2013 decided Issue Nos. 2, 3 and 4 in favour of the appellant. The application of the Management under Section 33(2)(b) was consequently rejected. The Corporation challenged the final order of the Labour Court, but a Learned Single Judge of the High Court dismissed its Writ Petition on 21st November, 2014. Still

aggrieved, the Corporation filed Writ Appeal No. 30 of 2015 which was allowed by a Division Bench of the High Court vide order dated 14th July, 2016 laying down that the Labour Court while exercising jurisdiction under Section 33(2)(b) could not have permitted the parties to adduce evidence as the scope of enquiry thereunder is very limited. The High Court, thus, viewed:-

> "A *prima facie* case does not mean a case proved to the hilt, but a case which, can be said to be established, if the evidence, which is led in support of the same, were believed. While determining whether a prima facie case has been made out, the relevant consideraiton is, whether on the evidence led, it was possible to arrive at the conclusion in question, and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself, could arrive at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has, only, got to consider whether the view taken is a possible view on the evidence on the record."

9. The Division Bench further observed that since the Labour Court had exceeded its jurisdiction the award passed by it as well as the order of the Learned Single Judge were liable to be set aside. The matter was, thus, remitted back to the Labour Court for reconsideration.

10. The First Additional Labour Court at Bangalore again

ventured into the controversy and reiterating its view, it passed the award dated 28th October, 2016 turning down the Corporation's application under Section 33(2)(b) on the ground that though issue No. 1 was decided against the workman holding that the enquiry held against him was just and proper, but on consideration of the plethora of documents Exts. R-1 to R-104 produced by the appellant it could be safely inferred that he had, in fact, applied for leave vide application Ext. A-3 and had also reported for duty on 29th August, 2005 but he was not allowed to join and instead the departmental enquiry was initiated. The Labour Court, thus, held that the appellant cannot be treated as an absentee from 29th August, 2005 onwards. The absence period was not from 18th August, 2005 to 29th October, 2005 it could rather at best be from 18th August, 2005 till 29th August, 2005. The Labour Court also relied upon certain decisions to hold that it was within its jurisdiction under Section 33(2)(b) of the Act to find out that "there was victimisation or unfair labour practices" adopted by the Management.

11. The aggrieved Corporation assailed the order of the

Labour Court before a Learned Single Judge who vide judgment dated 20.09.2017 took more or less the same view and declined to interfere with the order. The Corporation, therefore, once again questioned the order of the Learned Single Judge in Writ Appeal No. 6609 of 2017 which has been allowed by the Division Bench of the High Court vide impugned judgment dated 30th November, 2018, essentially on the premise that the jurisdiction under Section 33(2)(b) could not be stretched and expanded to permit the parties to lead their evidence which was never produced in the domestic enquiry. Such new evidence could not be relied upon to hold that the charges were not proved or that the punishment of dismissal was disproportionate. The Division Bench, thus, held:-

> "...From close scrutiny of the order passed by the Labour Court particularly paragraphs 25 to 45, it is evident that the findings by the Labour Court with regard to perversity of the findings recorded by the Enquiry Officer and victimization is based on additional material on record, which did not form a part of the enquiry proceeding. The Labour Court, while passing the impugned order has not only traveled beyond the order of remand, but has acted like an Appellate Authority.
>
> The learned Single Judge has failed to appreciate that the respondent only cross-examined the witnesses of appellant in the departmental enquiry and did not adduce any evidence. The respondent for the first

> time before the Labour Court produced the documents viz., Exs. R1 to R104, which, have been considered by the Labour Court. The learned Single Judge has also failed to appreciate that the Labour Court was required to decide the application under Section 33(2)(b) of the Act in the light of observations made by the Division Bench of this Court in order dated 14.07.2016 passed in W.A. No. 30/2015, which had attained finality and was binding on the Labour Court. The learned Single Judge has also not appreciated that the finding with regard to victimization of respondent is based on additional material, which was not part of the enquiry conducted against the respondent."

12. The Division Bench further held that the Labour Court was duty-bound to decide application under Section 33(2)(b) within the restricted parameters evolved by a Co-ordinating Bench in Writ Appeal No. 30 of 2015 decided on 14th July, 2016 in the 2nd round of litigation.

13. We have heard the appellant in person and Shri R.S. Hegde, Learned Advocate for the Corporation. The orders/Judgments passed by different forums in multiple rounds have also been compendiously perused.

14. Before determining the width and length of the jurisdiction exercisable by a Labour Court or Tribunal under Section 33(2)(b), it is beneficial to discuss the Legislative scheme of the Act and some of its relevant provisions having bearing on the issue to be resolved.

15. The 1947 Act was enacted to remove the defects experienced in the working of Trade Disputes Act, 1929 and to provide, inter alia,

a) Statutory mechanism for the settlement of industrial dispute which is conclusive and binding on the parties to the dispute;

b) to check the industrial unrest;

c) for creation of two new Institutions of Works Committees and Industrial Tribunal;

d) to provide an explicit procedure for reference of an Industrial dispute by the appropriate Government and enforcement of the Award which may be passed;

e) to re-orient the administration of the conciliation machinery provided under the old Act; and

f) also prohibition on strikes and lock-outs during the pendency of conciliation and adjudication proceedings, etc., etc. The Act, therefore, unambiguously aims at harmonising the Management-Workmen relationship and to prevent labour-unrest or industrial peace – both being detrimental to the industrial growth of the nation.

16. Chapter-III of the Act relates to “REFERENCE OF DISPUTES TO BOARDS, COURTS OR TRIBUNALS.” Section 10 thereof provides that where the appropriate government is of the opinion that an industrial dispute exists or is apprehended, it may refer the same either to a Board for promoting a settlement or to a Court for enquiry or it may

refer such dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication or if the said dispute relates to any matter specified in the Second or Third Schedule, to a Tribunal for adjudication. Section 10(1) of the Act reads as follows:-

> "**10. Reference of disputes to Boards, Courts or Tribunals.**- (1) [Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,-
>
> (a) refer the dispute to a Board for promoting a settlement thereof; or
>
> (b) refer any matter appearing to be connected with or relevant to the dispute, to a Court for enquiry; or
>
> (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
>
> (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:
>
> Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c);
>
> Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:
>
> Provided also that where the dispute in relation to

> which the Central Government is the appropriate Government, it shall be competent for the Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government."
>
> (Emphasis applied]

17. The Second Schedule of the Act lists the matters which fall within the jurisdiction of Labour Court, including the one at Sr. No. 3, "**3. Discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed."**

Similarly, the Third Schedule of the Act enlists elven types of matters, any of it if constitute an `industrial dispute', the same shall be referred for adjudication to the Industrial Tribunal under Section 10(1)(d) of the Act.

18. Chapter-IV lays down the procedure, powers and duties of different authorities for adjudication of the industrial disputes under Section 10 of Chapter-III, referred to above. In this regard, Section 11(3) of the Act vests the Board, Labour Court and Tribunal the powers of a Civil Court under the Code of Civil Procedure, 1908 when trying a suit, for the purpose of securing evidence. Section 11(3) of the Act says that:-

> “**11. Procedure and power of conciliation officers, Boards, Courts and Tribunals.-**
>
> xxx xxx xxx
>
> (3) Every Board, Court, [Labour Court, Tribunal and National Tribunal] shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit, in respect of the following matters, namely:-
>
> (a) enforcing the attendance of any person and examining him on oath;
>
> (b) compelling the production of documents and material objects;
>
> (c) issuing commissions for the examination of witnesses;
>
> (d) in respect of such other matters as may be prescribed,
>
> and every inquiry or investigation by a Board, Court, [Labour Court, Tribunal or National Tribunal] shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).”

19. Section 11A of the Act unequivocally empowers the Labour Court, Tribunals and National Tribunals to set aside the order of discharge or dismissal of a workman and direct his reinstatement on such terms and conditions, as it thinks fit, or to award any lesser punishment in lieu of such discharge or dismissal, provided that the Labour Court or the Tribunal, as the case may be, is satisfied that the order of discharge or dismissal, was not justified.

20. Chapter-VII of the Act comprises `MISCELLANEOUS’

provisions and its Section 33 provides that conditions of service, etc. of the workmen shall remain unchanged in certain circumstances during the pendency of proceedings. Section 33(2) with which we are concerned here reads as follows:-

> "**33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings**.-
>
> (1) .....
>
> (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the 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) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
>
> (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."

21. The composite Scheme of the Statute bears out that when an `industrial dispute' pertaining to "Discharge or `dismissal' of workmen including reinstatement of or `grant

of relief' to workmen wrongfully dismissed" arises (See Sr.No. 3 of Second Schedule), such dispute is referable for adjudication to the Labour Court in exercise of the jurisdiction vested in it under Section 10(1)(c) of the Act. The Labour Court shall have the powers of Civil Court to secure evidence for deciding such dispute. Most importantly, the doctrine of proportionality is statutorily embedded in Section 11A of the Act, which further empowers the Labour Court, subject to its satisfaction, to set aside the order of discharge or dismissal and reinstate a workman on such terms and conditions as it thinks fit or to award a lesser punishment in lieu thereof. All such awards or orders are enforceable under the Act.

22. The Legislature has, thus, provided a self-contained mechanism through Section 10 read with Sections 11(3) and 11A of the Act, for adjudication of an `industrial dispute' stemming out of an order of discharge or dismissal of a workman. Having done so, it can be safely inferred that neither the Legislature intended nor was there any legal necessity to set-up a parallel remedy under the same Statute for adjudication of the same `industrial dispute' by the same

Forum of Labour Court or Tribunal via Section 33(2)(b) of the Act. To say it differently, Section 33(2)(b) has been inserted for a purpose other than that for which Section 10(1)(c) and (d) have been enacted. Section 33(2)(b), thus, is neither meant for nor does it engender an overlapping procedure to adjudicate the legality, propriety, justifiability or otherwise sustainability of a punitive action taken against a workman.

23. Having held so, it should not take long to trace out the legislative object behind incorporation of Section 33, including sub-section (2) thereof. The caption of Section 33 itself sufficiently hints out that the primary object behind this provision is to prevent adverse alteration in the conditions of service of a workman when `conciliation' or any other proceedings in respect of an `industrial dispute' to which such workman is also concerned, are pending before a Conciliation Officer, Board, Arbitrator, Labour Court or Tribunal. The Legislature, through Section 33(1)(a) and (b) has purposefully prevented the discharge, dismissal or any other punitive action against the workman concerned during pendency of proceedings before the Arbitrator, Labour Court or a Tribunal, even on the basis of proven misconduct, save

with the express permission or approval of the Authority before which the proceedings is pending. Sub-section (2) of Section 33 draws its colour from sub-Section(1) and has to be read in conjunction thereto. Sub-section (2), in fact, dilutes the rigours of sub-section (1) to the extent that it enables an employer to discharge, dismiss or otherwise punish a workman for a proved misconduct not connected with the pending dispute; in accordance with Standing Orders applicable to the workman or in absence thereof, as per the terms of contract; provided that such workman has been paid one month wages while passing such order and before moving application before the Authority concerned `for approval of the action'. In other words, the Authority concerned (Board, Labour Court or Tribunal, etc.) has to satisfy itself while considering the employer's application that the `misconduct' on the basis of which punitive action has been taken is not the matter sub-judice before it and that the action has been taken in accordance with the standing orders in force or as per terms of the contract. The laudable object behind such preventive measures is to ensure that when some proceedings emanating from the

subjects enlisted in Second or Third Schedule of the Act are pending adjudication, the employer should not act with vengeance in a manner which may trigger the situation and lead to further industrial unrest.

24. Section 33(2)(b) of the Act, thus, in the very nature of things contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. As a natural corollary thereto, the Labour Court or the Forum concerned will lift the veil to find out that there is no hidden motive to punish the workman or an abortive attempt to punish him for a non-existent misconduct.

25. The Labour Court/Tribunal, nevertheless, while holding enquiry under Section 33(2)(b), would remember that such like summary proceedings are not akin and at par with its jurisdiction to adjudicate an `industrial dispute' under Section 10(1)(c) and (d) of the Act, nor the former provision clothe it with the power to peep into the quantum of

punishment for which it has to revert back to Section 11A of the Act. Where the Labour Court/Tribunal, thus, do not find the domestic enquiry defective and the principles of fair and just play have been adhered to, they will accord the necessary approval to the action taken by the employer, albeit without prejudice to the right of the workman to raise an `industrial dispute' referrable for adjudication under Section 10(1)(c) or (d), as the case may be. It needs pertinent mention that an order of approval granted under Section 33(2)(b) has no binding effect in the proceedings under Section 10(1)(c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/Tribunal.

26. The scope of enquiry vested in a Labour Court or Tribunal under Section 33(2)(b) has been the subject matter of a catena of decisions by this Court. In ***Martin Burn Ltd. v. R.N.Bangerjee***[1], a Three-Judge Bench of this Court considered the scope of enquiry under Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 whereunder also permission to discharge a workman was required to be obtained in the manner which was somewhat similar to

1. 1958 SCR 514

Section 33 (2)(b) of the 1947 Act. This Court, thus, held:-

> "27. The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondent's service. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record."
>
> [Emphasis by us]

27. A Three-Judge Bench of this Court in ***Punjab National Bank Ltd. v. Workmen***[2], considered and interpreted the scope of Section 33 to lay down that the jurisdiction of the Tribunal in dealing with such applications is limited. It was held that:-

> "24. Where an application is made by the employer for the requisite permission under Section 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

2. (1960) 1 SCR 806

to victimisation 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 these 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 Section 33 that would not be the end of the matter. It is not as if the permission granted under Section 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 Section 33 is thus substantially different from the effect of compliance with Section 240 of the Government of India Act, 1935, or Article 311(2) of the Constitution. In the latter classes of 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 Section 33 the removal of the ban merely enables the employer to make an order of dismissal and thus avoid incurring the penalty imposed by Section 31(1). But if an industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requiste permission obtained under Section 33 has to face the scrutiny of the tribunal."

[Emphasis applied]

28. In ***Punjab National Bank*** (supra), this Court relied upon ***Automobile Products of India Ltd. v. Rukmaji***

Bala, and further opined that:-

> "In *Automobile Products of India Ltd. v. Rukmaji Bala, this Court* was dealing with a similar problem posed by the provisions of Section 22 of Act 48 of 1950, and Section 33 of the Act. Dealing with the effect of these sections this Court held that the object of Section 33 was to protect the workmen against the victimisation by the employer and to ensure the termination of the proceedings in connection with the industrial disputes in a peaceful atmosphere. That being so, all that the tribunal, exercising its jurisdiction under Section 33, is required to do is to grant or withhold the permission, that is to say, either to lift or to maintain the ban. This section does not confer any power on the tribunal to adjudicate upon any other dispute or to impose conditions as a prerequisite for granting the permission asked for by the employer. The same view has been expressed in *Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup*."

29. Another Three-Judge Bench of this Court in ***Mysore Steel Works Pvt. Ltd. v. Jitendra Chandra Kar and Others***[3], held an indepth scrutiny in the scope of jurisdiction vested in an Industrial Tribunal under Section 33(2) (b) of the Act and ruled as follows:-

> "10.The question as to the scope of the power of an Industrial Tribunal in an enquiry under Section 33(2) of the Industrial Disputes Act has by now been considered by this Court in a number of decisions and is no longer in dispute. <u>If the Tribunal comes to the conclusion that the domestic enquiry was not defective, that is, it was not in violation of the principles of natural justice, it has only to see if there was a prima facie case for dismissal, and whether the employer had come to a bona fide conclusion that the employee was guilty of misconduct. In other words, there was no unfair labour</u>

3. (1971) 1 LLJ 543

practice and no victimisation. It will then grant its approval. If the Tribunal, on the other hand, finds that the enquiry is defective for any reason, it would have to consider for itself on the evidence adduced before it whether the dismissal was justified. If it comes to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified it would give its approval to the order of dismissal made by the employer in a domestic enquiry. (See *P.H. Kalyani* v. *Air France* [1964 (2) SCR 104 at 112]) where, therefore the domestic enquiry is conducted in violation of the principles of natural justice evidence must be adduced before the Tribunal by the employer to obtain its approval. Such evidence must be adduced in the manner evidence is normally adduced before the Tribunal, that is, witnesses must be examined and not by merely tendering the evidence laid before the domestic enquiry, unless the parties agree and the tribunal given its assent to such a procedure. (See *K.N. Barmab* v. *Management of Badla Beta Tea Estate* [CA No. 1017 of 1968, decided on 9th March, 1967]). It is clear, therefore, that the jurisdiction of a tribunal under Section 33(2) is of a limited character. Where the domestic enquiry is not defective by reason of violation of principles of natural justice or its findings being perverse or by reason of any unfair labour practice, the tribunal has only to be satisfied that there is a prima facie case for dismissal. The tribunal in such cases does not sit as an appellate Court and come to its own finding of fact."

[Emphasis is ours]

30. The view taken in ***Mysore Steel Works Pvt. Ltd.*** (supra) was reiterated in ***Lalla Ram v. D.C.M. Works Ltd.***[4], where this Court analysed Section 33(2)(b) of the Act and held as follows:-

> "12. The position that emerges from the abovequoted decisions of this Court may be stated thus: In proceedings under Section 33(2)(*b*) of the

4. (1978) 3 SCC 1

Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (*i*) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (*ii*) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (*iii*) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in *Bengal Bhatdee Coal Co.* v. *Ram Prabesh Singh*[AIR 1964 SC 486 : (1964) 1 SCR 709 : (1963) 1 LLJ 291 : 24 FJR 406] , *Titaghur Paper Mills Co. Ltd.* v. *Ram Naresh Kumar* [(1961) 1 LLJ 511 : (1960-61) 19 FJR 15] , *Hind Construction & Engineering Co. Ltd.* v. *Their Workmen* [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232] , *Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd.* v. *Management* [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : AIR 1973 SC 1227 : (1973) 3 SCR 587] and *Eastern Electric & Trading Co.* v. *Baldev Lal*[(1975) 4 SCC 684 : 1975 SCC (L&S) 382 : 1975 Lab IC 1435] that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (*iv*) whether the employer has paid or offered to pay wages for one month to the employee and (*v*) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the

> evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”
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> [Emphasis supplied]

31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour

Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified. That is the precise *ratio – decendi* of the decisions of this Court in (i) ***Punjab National Bank***, (ii) ***Mysore Steel Works Pvt. Ltd.*** and (iii) ***Lalla Ram***'s cases (supra).

32. A Division Bench of this Court in ***Cholan Roadways Ltd. v. G. Thirugnanasambandam***[5], also went into the issue of jurisdiction exercisable under Section 33(2)(b) of the Act and relying upon the ***Martin Burn Ltd.*** (supra), it has opined as follows:-

> "18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in *Martin Burn Ltd.* v. *R.N. Banerjee* [AIR 1958 SC 79 : 1958 SCR 514]. While exercising jurisdiction under Section 33(2)(*b*) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regards the validity or otherwise of the domestic enquiry held against the delinquent, keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding

5. (2005) 3 SCC 241

before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act."

[Emphasis applied]

The Court then observed that:

> "19. It is further trite that the standard of proof required in a domestic enquiry vis-a-vis a criminal trial is absolutely different. Whereas in the former "preponderance of probability" would suffice; in the latter, "proof beyond all reasonable doubt" is imperative.
>
> 20. The Tribunal while exercising its jurisdiction under Section 33(2)(*b*) of the Industrial Disputes Act was required to bear in mind the aforementioned legal principles. Furthermore, in a case of this nature the probative value of the evidence showing the extensive damages caused to the entire left side of the bus; the fact that the bus first hit the branches of a tamarind tree and then stopped at a distance of 81 ft therefrom even after colliding with another bus coming from the front deserved serious consideration at the hands of the Tribunal. The nature of impact clearly demonstrates that the vehicle was being driven rashly or negligently."

33. The Three-Judge bench decisions of this Court in ***Punjab National Bank*** and ***Mysore Steel Works Pvt. Ltd.*** (supra), as well as the Division Bench judgment in ***Lalla Ram*** (supra) were unfortunately not cited before this Court in ***Cholan Roadways Ltd.*** There is yet no conflict of opinion as in ***Cholan Roadways Ltd.*** (supra) also this Court reiterated the past consistent view that while exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial

Tribunal is required to see only whether a prima facie case has been made out as regard to the requirement of domestic enquiry. ***Cholan Roadways*** nonetheless deals with only 1st phase of the jurisdiction exercisable under Section 33(2)(b) and it falls short to elucidate as to whether, in the event of a defective domestic enquiry, the Labour Court/Tribunal can also the parties to adduce evidence. The 2nd phase of Jurisdiction exercisable under Section 33(2)(b) was not debated in ***Cholan Roadways*** (supra) apparently for the reason that on facts this Court was satisfied that the delinquent workman was guilty of the misconduct attributed and proved against him in the domestic enquiry. On the other hand, ***Mysore Steel Works Pvt. Ltd.*** and ***Lalla Ram*** have gone a step ahead to hold that the Tribunal can permit the parties to adduce evidence if it finds that the domestic enquiry suffers from any defect or was violative of the principles of natural justice or was marred by unfair labour practice, it may then independently examine the evidence led before it to embark upon the question whether or not the punitive action deserves to be accorded approval.

34. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be `preponderance of probability' and not a `proof beyond all reasonable doubts' suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2)(b) of the Act.

35. If the awards/orders of the Labour Court or the judgments passed by Learned Single Judge(s) and the Division Benches of the High Court are evaluated on these principles, it appears to us that all of them went partly wrong

and their respective orders suffer from one or the other legal infirmity. While the Labour Court and the Learned Single Judge(s) have erroneously presumed that no enquiry can be held under Section 33(2)(b) without asking the parties to lead their evidence, the Learned Division Benches of the High Court have proceeded on the premise that in a prima facie fact finding enquiry under Section 33(2)(b) no evidence can be adduced or considered by the Labour Court except what is on the record of domestic enquiry. Both the views do not go hand in hand with the law laid down by this Court in ***Punjab National Bank***, ***Mysore Steel Works Pvt. Ltd.*** and ***Lalla Ram's*** cases (supra). The Division Bench of the High Court solely depended upon ***Martin Burn Ltd.*** and ***Cholan Roadways Ltd.*** (supra) to hold that the scope of enquiry under Section 33(2)(b) being limited to see that prima facie the enquiry is just and proper, the Labour Court is precluded from asking the parties to lead any other evidence. Such a view is not in confirmity with the exposition of law in ***Punjab National Bank, Mysore Steel Works Pvt. Ltd.*** and ***Lalla Ram's*** cases, cited above. The Labour Court did not exceed its jurisdiction in permitting the

parties to adduce the evidence before it though it erred in relying upon the same without holding that the enquiry was defective or the punitive action was vitiated for want of bona fides. The finding on issue No. 1 that the domestic enquiry was held in a proper and fair manner also acquires significance here. Still further, the scope and object of Section 33(2)(b) cannot be expanded to an extent that the very scheme of adjudication of an `industrial dispute' under Sections 10(1)(c) and (d) read with Section 11A of the Act becomes superfluous.

36. It is for this precise reason that the Three-Judge Bench in ***Punjab National Bank*** (supra), after limiting the scope of enquiry under Section 33(2)(b) of the Act, has categorically held that the order of dismissal even if approved under Section 33(2)(b), would not attain finality and that .... "if an industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requisite permission obtained under Section 33 has to face the scrutiny of Tribunal."

37. In ***Cholan Roadways Ltd.*** (supra) also, this Court gave opportunity to the workman to take recourse to such

remedy as was available to under the laws for questioning the order of dismissal.

38. The Labour Court or Tribunal, therefore, while holding enquiry under Section 33(2)(b) cannot invoke the adjudicatory powers vested in them under Section 10(i)(c) and (d) of the Act nor can they in the process of formation of their prima facie view under Section 33(2)(b), dwell upon the proportionality of punishment, as erroneously done in the instant case, for such a power can be exercised by the Labour Court or Tribunal only under Section 11A of the Act.

39. Consequently, the Labour Court shall in the instant case re-visit the matter afresh within the limit and scope of Section 33(2)(b), as explained above and keeping in mind that the exercise in hand is not adjudication of an `industrial dispute' under Section 10(1)(c) or (d) read with Section 11A of the Act. However, if the Labour Court finds that the domestic inquiry held against the appellant is suffering from one of the incurable defects as illustrated by this Court in ***Mysore Steel Works Pvt. Ltd.*** or ***Lalla Ram's*** cases, then it may look into the evidence adduced by the parties for the purpose of formation of its prima facie opinion.

40. This is, however, not the end of the matter. We are not oblivious to the fact that the appellant attained the age of superannuation in the year 2010. There might be some substance in the allegation that he used to indulge in the acts of indiscipline, insubordination or may have absented himself from duties for a few days, there are, however, no allegations of financial irregularity or embezzlement of funds. It has come on record that when the proceedings were pending before the High Court, the parties were directed to mediate and submit their settlement proposals. The appellant also submitted his proposal which is on record, in which he demanded 75% of back wages whereas the Corporation agreed to pay 50% back wages to him. The settlement could not take place due to the difference in demand and offer to the extent of 25% back wages. Though the appellant seems to be in no mood to settle the dispute, we have not lost the hope and are sanguine that better sense will prevail upon both the parties and they will make an earnest and renewed effort through the Mediation Centre of High Court of Karnataka at Bangalore for amicable settlement of the dispute. This can only happen by adopting

the give and take approach, especially to avoid prolonged litigation. The appellant may agree to take less than 75% back wages and the Corporation may incline to offer more than 50% back wages. Mediators will surely make efforts to bridge the gap and see that the dispute comes to an end. Both the parties, must also bear in mind that the recourse to `mediation' suggested by us is one of the statutory mode prescribed for resolving an `industrial dispute' under the Act. We, therefore, direct both the parties to appear before the Mediation Centre of the High Court of Karnataka at Bangalore on 4th November, 2019 at 11.00 A.M. and let such proceedings be concluded by 3rd December, 2019. Till such time, the stay of proceedings before the Labour Court granted by this Court shall continue to operate. If the parties are able to resolve their dispute amicably, the Mediation Centre of the High Court of Karnataka at Bangalore shall send its report to this Court. Registry is directed to list the matter before the Court within two weeks from the date of receipt of the mediation report for further directions, if need be. However, if the mediation fails, the parties are directed to appear before the Labour Court at Bangalore on 5th

December, 2019. In that event, the Labour Court shall decide the matter on merits without taking any lead from what we have suggested for the purpose of amicable settlement. It is made clear that we have not expressed any views on merits of the case.

41. In the light of above discussion, the appeal is allowed in part and the impugned judgment dated 30.11.2018 passed by the Division Bench of the High Court is modified to the extent mentioned above.

.....J.
(SANJAY KISHAN KAUL)

..... J.
(SURYA KANT)

NEW DELHI
DATED : 16.10.2019