2021 INSC 527

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No 5897 of 2021

(Arising out of SLP (Civil) No 30511 of 2018)

Sri Dorairaj Spintex .... **Appellant(s)**

Versus

R Chittibabu & Ors ....**Respondent(s)**

J U D G M E N T

Dr. Dhananjaya Y. Chandrachud, J

1 Leave granted.

2 The appeal arises from a judgment of a Division Bench of the High Court of Judicature at Madras dated 14 March 2018. The High Court dismissed the Letters Patent Appeal filed by the management against a judgment of a Single Judge. The Single Judge had upheld an order dated 31 March 2003 of the Assistant Commissioner of Labour, Dindigul, rejecting an application filed by the management under Section 33(2)(b) of the Industrial Disputes Act 1947[1]. The management is in appeal.

3 The appellant had an establishment which was functioning in Dindigul District. An application was filed by the appellant on 16 November 2002 before the Assistant Commissioner of Labour under Section 33(2)(b) of the ID Act for the grant of

1 "ID Act"

approval of its action to dismiss thirty-one workmen against whom disciplinary proceedings had been initiated and concluded. The material facts which need to be summarized for the purpose of the present appeal are thus: On 4 July 2002, the workmen raised an industrial dispute under Section 2(k) of the ID Act. The dispute was taken into conciliation. While the conciliation proceedings were pending, the workers commenced a stay-in strike on 31 July 2002. On 1 August 2002, another dispute was raised by the workmen, which was taken into conciliation. The management initially suspended forty-seven workmen. A charge memo was issued to the workmen on 20 August 2002 to which there was a reply on 30 August 2002. The management commenced a domestic enquiry. After the conclusion of the enquiry, a show cause notice was issued to the workmen on 29 October 2002. On 16 November 2002, an order of dismissal was issued. Following the order of dismissal, the management filed an application for approval before the Assistant Commissioner of Labour under Section 33(2)(b).

4 The Assistant Commissioner of Labour held that since conciliation proceedings were pending with reference to a dispute which was raised by the workmen on 4 July 2002 and, subsequently, on 1 August 2002, prior approval before the termination was necessary under Section 33(1)(b) and that the action of management in taking steps in pursuance of Section 33(2)(b) was unlawful. The application for approval under Section 33(2)(b) was rejected. The order of the Assistant Commissioner of Labour was challenged in writ proceedings before the High Court. By a judgment dated 4 March 2013, the Single Judge held that since conciliation proceedings were pending before the Conciliation Officer, "even though the dismissal order is for some other reason", yet the prior approval of the authority specified in terms of Section 33(1)(b) was necessary. The order of the Single Judge was carried in appeal before the Division Bench. The Division Bench, while affirming the judgment,

directed the appellant to pay (i) 50% of the back wages for the period from the date of dismissal till the date of the closure of the appellant's unit; (ii) closure compensation; and (iii) interest at 6% per annum calculated from the date of closure. The appellant has closed its unit from 8 July 2009.

5 Mr Niraj Kumar Singh, counsel appearing on behalf of the appellant, submits that the Assistant Commissioner of Labour failed to notice the distinction between Section 33(1)(b), which postulates a requirement of prior approval, and Section 33(2)(b), on the other hand, which requires compliance with two conditions, namely, (i) payment of one month's salary, which is not in dispute; and (ii) the filing of an application to the authority before which the proceeding is pending for approval of the action taken by the employer. Counsel submitted that the provisions of Section 33(1)(b) are attracted when the action of the management is in respect of any misconduct connected with the dispute. On the other hand, where the action of the management is for misconduct not connected with the dispute, Section 33(2)(b) would stand attracted. On the above premises, it has been urged that the Assistant Commissioner of Labour erred in rejecting the application for approval on the ground that prior approval under Section 33(1)(b) was required.

6 On the other hand, Mr T Harish Kumar, counsel appearing on behalf of the respondent – workmen, submitted that, by an order dated 10 February 2020 passed by the Chamber Judge in these proceedings, the appeal stands dismissed as against Respondent Nos 10, 22, 26 and 31, who had died during the pendency of the proceedings before the High Court for failure to bring the legal representatives on the record. Besides this, it has been submitted that the workmen had raised an industrial dispute initially on 4 July 2020 which was taken into conciliation and, thereafter, another industrial dispute was raised on 1 August 2020 in respect of

which conciliation proceedings were in progress. Hence, it has been submitted that on a holistic view of the provisions of Section 33(1)(b), the termination of the workmen for misconduct is a matter which must be held to be connected with the dispute. Hence, it was submitted that the provisions of Section 33(1)(b) and not Section 33(2)(b) would stand attracted. In the absence of prior approval, the termination was, according to the counsel, unlawful and the Assistant Commissioner of Labour was correct in rejecting the application.

7 The rival submissions fall for consideration.

8 Sections 33(1) and 33(2), upon which the dispute in the present case turns, are extracted below for convenience of reference:

> "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,--
>
> (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 workmen concerned in such dispute,
>
> save with the express permission in writing of the authority before which the proceeding is pending.
>
> (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, or 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…."

9 The basic premise underlying Section 33(1) is that during the pendency of the conciliation proceedings 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, an employer is prohibited from (a) altering the conditions of service of the workmen; or (b) dismissing, discharging or punishing the workmen in respect of any matter or misconduct connected with the dispute save with the express permission in writing of the authority before which the proceeding is pending. Both in the context of clause (a) as well as clause (b) of sub-Section (1), the crucial words are "connected with the dispute". Clause (a) of sub-Section (1) deals with an alteration of the conditions of service in regard to any matter connected with the dispute. Clause (b) deals with discharge or punishment, whether by way of dismissal or otherwise, of a workman for any misconduct connected with the dispute. Where the connection with the dispute exists, Section 33(1) requires the prior permission in writing of the authority before whom a proceeding is pending.

10 On the other hand, Section 33(2) applies to (i) an alteration of the conditions of service in regard to a matter not connected with the dispute; or (ii) the discharge or punishment, whether by way of dismissal or otherwise, of a workman for misconduct which is not connected with the dispute. The distinction between sub-Section (1) and sub-Section (2) lies in whether the action which is proposed by the employer during the pendency of a conciliation proceeding is or is not connected with the dispute. Whether the action is connected to the dispute has to be determined on the basis of the facts of each case.

11 When the ID Act was enacted, Section 33 imposed a ban on the employer discharging, dismissing or punishing a workman during the pendency of proceedings before the Tribunal and other specified authorities "except for misconduct not connected with the dispute". By Amending Act 48 of 1950, Section 33 was substituted and a complete ban was imposed against discharge, dismissal or punishment of a workman during the pendency of proceedings before the Court and other specified authorities. The right of the employer to take action even for misconduct was withdrawn. Parliament being conscious of the need for discipline in industry amended the provision by substituting Section 33 by Act 36 of 1956 so as to restore to the employer the right to take punitive action in specified conditions. The impact of the legislative change was noticed in a judgment of three judges of this Court in **Strawboard Manufacturing Company Ltd.** v. **Govind**[2], Justice KN Wanchoo, speaking for the three judge Bench observed :

> "3. Before however we turn to the interpretation of the proviso we may refer to the circumstances in which Section 33(2) came to be enacted. Originally there was no such provision like Section 33(2) in the Act and the only provision to be found therein corresponded to the present Section 33(1). The object behind enacting Section 33 as it was before the amendment of 1956 was

[2] (1962) Supp 3 SCR 618

> to allow continuance of industrial proceedings pending before any authority prescribed by the Act in a calm and peaceful atmosphere undisturbed by any other industrial dispute. The plain object of the section was to maintain the status quo as far as possible during the pendency of any industrial dispute before a tribunal. But it seems to have been felt that Section 33, as it stood before the amendment of 1956, was too stringent for it completely took away the right of the employer to make any alteration in the conditions of service or to make any order of discharge or dismissal without making any distinction as to whether such alteration or such an order of discharge or dismissal was in any manner connected with the dispute pending before an industrial authority. It seems to have been felt therefore that the stringency of the provision should be softened and the employer should be permitted to make changes in conditions of service etc. which were not connected with the dispute pending before an Industrial Tribunal. For the same reason it was felt that the authority of the employer to dismiss or discharge a workman should not be completely taken away where the dismissal or discharge was dependent on matters unconnected with the dispute pending before any tribunal. At the same time it seems to have been felt that some safeguards should be provided for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. Consequently Section 33 was redrafted in 1956 and considerably expanded. It is now in five sub-sections while before 1956 it consisted practically of what is now sub-section (1)."

This decision was also confirmed by a Constitution Bench of this Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd** v. **Ram Gopal Sharma and Ors.**[3]. These provisions have been interpreted in several decisions of this Court including **Chartered Bank, Bombay** v. **Chartered Bank Employees' Union**[4]**; Tata Oil Mills Co. Ltd** v. **Workmen**[5] **; PD Sharma** v. **State Bank of India**[6]**; Air India Corporation** v. **Rebellow**[7]**; Workmen of Sudder Office, Cinnamara** v. **Management of Sudder Office**[8]**;** and **Mahendra Singh Dhantwal** v. **Hindustan Motors Ltd**[9]. Where the termination for misconduct is not

[3] AIR 2002 SC 643
[4] (1960) 3 SCR 441
[5] (1964) 7 SCR 555
[6] (1968) 3 SCR 91
[7] (1972) 1 SCC 814
[8] (1972) 4 SCC 746
[9] (1976) 4 SCC 606

connected to the industrial dispute, Section 33(2)(b) recognizes the authority of the employer to initiate disciplinary action while at the same time imposing safeguards. They are intended to balance the disciplinary jurisdiction of the employer with the need to ensure that there is no victimization of the workmen.

12 In the present case, the order of the Assistant Commissioner of Labour takes note of the fact that initially a dispute was raised on 4 July 2002 by the workmen under Section 2(k) based on the following demands:

> "1. Passed (sic) on seniority in the spoiling unit, the workmen should be posted as sider and arya lifters
>
> 2. The monthly salary for the workmen working in the factory should be paid before 7th of the month
>
> 3. The workmen working in the factory shall be given hygienic drinking water
>
> 4. The women workmen working in the factory should be given two protective clothes to protect from the accident in every year."

13 The demand was received in the office of the Conciliation Officer and conciliation proceedings were in progress. The Union commenced a stay-in strike. Another dispute was raised on 1 August 2002 for the grant of permanency to the workmen in the factory and the conciliation proceedings were initiated on the demand. The management convened the disciplinary proceeding on the ground that the workmen had indulged in acts of vandalism involving the property of the employer. The disciplinary proceedings were convened for acts of vandalism involving the property of the employer. The misconduct for which the enquiry was convened had no connect with the demands by the workmen. In the first of the two conciliation proceedings, the demand of the workmen was for promotional avenues, the payment of monthly salary before the seventh day of each month, drinking water

and protective clothing. In the second conciliation proceedings, the workmen had claimed the status of permanency. The disciplinary enquiry was held in respect of the acts of misconduct alleged to have been committed by the workmen involving the property of the employer. These dismissal for misconduct cannot be regarded as being connected to the dispute which was raised in conciliation, as noted above. The Assistant Commissioner of Labour came to the conclusion that the enquiry was conducted in accordance with the principles of natural justice and entered a finding of fact that there was no evidence to indicate that some of the workmen were protected workmen. The Assistant Commissioner of Labour also held that on 2 August 2002, a law and order problem had arisen as a result of which the management had initiated disciplinary proceedings. Nonetheless, the Assistant Commissioner of Labour came to the conclusion that once conciliation proceedings were initiated, prior approval under Section 33(1)(b) was necessary and this finding has been confirmed both by the Single Judge and the Division Bench of the High Court. In entering this finding, all the three fora have clearly lost sight of the distinction between sub-Section (1) and sub-Section (2) of Section 33 of the ID Act. The Single Judge noticed that the dismissal was for some other reason, yet held that Section 33 (1)(b) was attracted. There has been no independent application of mind by the Division Bench at all.

14 Once we have come to the conclusion that the action of dismissal for misconduct was not connected with the dispute which was pending in conciliation, the provisions of Section 33(2)(b) of the ID Act would stand attracted. There is no dispute about the fact that there was compliance of the provisions of Section 33(2)(b), nor is there a finding to the contrary. In this view of the matter, the order of the Assistant Commissioner of Labour was contrary to law and there was an error on the part of the Single Judge and the Division Bench in affirming the order. We accordingly

allow the appeal and set aside the impugned judgment and order of the Division Bench of the High Court of Judicature at Madras dated 14 March 2018. In consequence, the application for approval filed by the appellant under Section 33(2)(b) of the ID Act would stand approved.

15 Since the appeal stands rejected against Respondent Nos 10, 22, 26 and 31 in pursuance of the order of the Chamber Judge dated 10 February 2020, we clarify that this order shall not affect the entitlement of the legal representatives of the deceased – workmen to the benefits which flow in accordance with law.

16 There shall be no order as to costs.

17 Pending application, if any, stands disposed of.

……..…..…..……..…….....J.
[Dr Dhananjaya Y Chandrachud]

…….…..…..……..…….....J.
[Vikram Nath]

…….…..…..……..…….....J.
[B V Nagarathna]

New Delhi;
September 22, 2021

-s-

ITEM NO.7 Court 4 (Video Conferencing) SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).30511/2018

(Arising out of impugned final judgment and order dated 14-03-2018 in WA No. 1292/2013 passed by the High Court of Judicature at Madras)

SRI DORAIRAJ SPINTEX **Petitioner(s)**

VERSUS

R. CHITTIBABU & ORS. **Respondent(s)**

Date : 22-09-2021 This petition was called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE VIKRAM NATH
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) **Mr. Niraj Kumar Singh, Adv.**
Mr. Satyajeet Kumar, AOR

For Respondent(s) **Mr. T. Harish Kumar, AOR**
Mr. Navneet Dugar, Adv.
Mr. Shubham Kothari, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER