IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 233 OF 1998.

Shri Ramdas Borkar,
H. No. 222, Orulem
Vasco da Gama. ... Petitioner.

Versus

1. The Industrial Tribunal,
   by its Presiding Officer,
   Junta House, 2nd Floor,
   Panaji.
2. M/s. Goa Shipyard Limited,
   Vasco da Gama. ... Respondents.

Mr. S.S. Kantak, Advocate for the Petitioner.

Mr. M.S. Bandodkar, Advocate for the Respondent No. 2.

Coram: P.V. HARDAS, J.

Date: 29th November 2002.

ORAL JUDGMENT.

This petition has been filed challenging the Award, dated 20th October 1997, passed by the Industrial Tribunal, Panaji, in Reference No. IT/53/89. The learned Presiding Officer of the Industrial Tribunal by the aforesaid Award declared that the action of the employer in the present petition in terminating the services of the petitioner with effect from 16th February 1984 is legal and justified.

2. The brief facts as are required for deciding this petition are set out hereunder:-

On 8th March 1983, a charge-sheet came to be filed against the present petitioner for the alleged

misconduct that he had given two fist blows to one John Menezes, on 26th February 1983. On 16th February 1984, the petitioner came to be dismissed from service. Since another reference was pending before the Industrial Tribunal, an application was filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 read with Rule 60(2) of the Industrial Tribunal (Central) Rules, 1957. In the said application it was stated that the Inquiry Officer had held the present petitioner guilty of misconduct on 4 charges. The findings of the Inquiry Officer were accepted by the Management and in view of the gravity of misconduct proved against the petitioner, a show cause notice was issued to him as to why he should not be dismissed from service. After perusing his explanation, the Management found that dismissal from service was justified and, accordingly, the petitioner was dismissed from service by letter dated 16th February 1984. The learned Presiding Officer of the Industrial Tribunal, by his Order dated 25th September 1985, granted the approval sought for by the Management. The Government of Goa, by its Order dated 17th August 1989, made a reference, under Section 10(1)(d) of the Industrial Disputes Act, for adjudication to the Industrial Tribunal. The term in the reference was:-

> "Whether the action of the Management of M/s. Goa Shipyard Limited in terminating the services of their

> workman Shri Ramdas Borkar, Gas Cutter, with effect from 16.2.1984 is legal and justified?
>
> If not, to what relief the workman is entitled?"

The reference under Section 10(1)(d) was registered as IT/53/89. The petitioner filed his Statement of Claim, the respondents filed their written statement and the Industrial Tribunal, on the basis of the pleadings, framed issues. It appears that the Industrial Tribunal took up issue No. 6 as preliminary issue and recorded its finding by its Order, dated 19th August 1992. The said issue no. 6 was:-

> "Whether a finding given in regard to the fairness and legality of the domestic enquiry in IT/7/84 operates as res judicata?"

Incidentally, it may be stated that the application of the employer under Section 33(2)(b) of the Industrial Disputes Act was registered as Application No. IT/7/84, which came to be decided by the Industrial Tribunal on 25th September 1985. The petitioner, in response to the determination of issue no. 6 as a preliminary issue, contended that the findings recorded in the Application No. IT/7/84 were recorded in an Inquiry under Section 33(2)(b) of the Industrial Disputes Act and, therefore, would not operate as res judicata. The Industrial Tribunal, however, came to the conclusion that the findings recorded in the Order dated 25th September 1985 in Application No. IT/7/84 operated res judicata.

3. The following issues were framed, which were taken up for consideration by the Industrial Tribunal:-

> 1. Whether a fair, proper and impartial enquiry was held against Party I/Workman as regards the incident of assault dated 26.2.1983?
>
> 2. Whether the workman fully participated in the departmental enquiry and was given full opportunity to defend himself in the departmental enquiry?
>
> 3. Whether the management acted in a fair manner by relying on the report and findings of the enquiry officer?
>
> 4. If so, whether the action of the management in terminating the services of party I/Workman based on the report of the enquiry officer is just and proper in the circumstances of the case?
>
> 5. Whether the above action of the management was approved by this Tribunal in IT/7/84 as contemplated u/s 33(2)(b) of the Industrial Disputes Act?
>
> 6. Whether the findings given in regard to the fairness and legality of the domestic enquiry in IT/7/84 operates as res judicata?
>
> 7. If this reference is held tenable inspite of the finding in IT/7/84 dated 25.9.84, whether the action of the management in terminating the services of Shri Ramdas Borkar is just and legal in the circumstances of the case?
>
> 8. If not, to what reliefs, if any, is the workman entitled to in this Government reference?"

4. The Industrial Tribunal, at paragraph 8 of its Award, dated 20th October 1997, has come to the

conclusion that, in view of the Order dated 19th August 1992 holding that the Order of the Industrial Tribunal dated 25th September 1985, in IT/7/84, granting permission under Section 33(2)(b), operates as res judicata, issues 1 and 2 operate as res judicata.

5. Mr. Kantak, learned counsel appearing on behalf of the petitioner, has relied on the Judgment of the Hon'ble Apex Court in **Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation and another,** A.I.R. 1960 S.C. 160. Reliance is placed on paragraphs 24 and 25 of the report, which read as under:-

> "24. Where an application is made by the employer for the requisite permission under S. 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 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 face 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 S. 33 that would not be the end of the matter. It is not as if the permission granted under S. 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 S. 33 is thus substantially different from the effect of compliance with S. 240 of the Government of India Act, 1935, or Art. 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 S. 33 the removal of the ban merely enables the employer to make an order of dismissal and thus avoid incurring the penalty imposed by S. 31(1). But if an industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requisite permission obtained under S. 33 has to face the scrutiny of the tribunal."

6. Mr. Kantak further placed reliance on the decision of the learned Single Judge of the Karnataka High Court in **The Management of M/s Amalgamated Elec. Co. Ltd., Belgaum Branch v. Workmen of M/s. Amalgamated Electricity Co. Ltd., Belgaum Branch and others**, 1975 Lab.I.C. 879. In the aforesaid Judgment of the learned Single Judge of the Karnataka High Court, relying on Punjab National Bank Ltd. v. All India

Punjab National Bank Employees' Federation and another (Supra), it has been held at paragraph 4 as follows:-

> " The scope of enquiry under S. 33(2)(b) is very limited. The Tribunal has to satisfy itself whether there is a prima facie case made out by the management or not. But while deciding a reference under S. 10, the Tribunal has to consider in detail the validity of the domestic enquiry held by the management and the evidence adduced by it in support of the acts alleged to have been committed by the workers and whether the termination of their services is justified or not.
>
> The finding recorded in a proceeding under Section 33(2)(b) regarding the validity of a domestic enquiry cannot be used as res judicata in a subsequent reference under Sec. 10 even though the questions that arise for consideration are the same."

7. In view of the decision of the Hon'ble Apex Court referred to above, it is clear that the scope of inquiry under Section 33(2)(b) is very limited. The Tribunal has to only prima facie satisfy itself and the said prima facie satisfaction can not be said to operate as res judicata in a subsequent reference under Section 10 of the Industrial Disputes Act. Therefore, according to me, the learned Industrial Tribunal was wholly incorrect in holding that the Order in IT/7/84, dated 25th September 1985, deciding the application under Section 33(2)(b) of the Industrial Disputes Act operates as res judicata while deciding issues 1 and 2. The

Order of the Industrial Tribunal dated 19th August 1992 in respect of the preliminary issue which held that the Order of the Tribunal while deciding the application under Section 33(2)(b) of the Industrial Disputes Act operates as res judicata is unsustainable in law. The Industrial Tribunal, while adjudicating upon the dispute which was referred to it, ought to have decided all the issues, particularly issues 1 and 2, dehors the Order of the Tribunal while deciding the application under Section 33(2)(b) of the Industrial Disputes Act.

8. The Award passed by the Industrial Tribunal, dated 20th October 1997 is, therefore, unsustainable in law. The Industrial Tribunal is required to decide issues 1 and 2 on the basis of the evidence tendered by the parties and not be bound by a prima facie satisfaction which was recorded while deciding the application under Section 33(2)(b) of the Industrial Disputes Act. Thus, the petition succeeds. The impugned Award dated 20th October 1997 passed by the Industrial Tribunal, Panaji, in IT/53/89 is, hereby, quashed and set aside. The matter is remitted to the Industrial Tribunal to decide all the issues afresh preferably within 6 months of the receipt of the writ of this Court. The parties shall co-operate in the expeditious disposal of the case. Rule made absolute in

terms of prayer clause (a) with costs which are quantified at Rs. 3,000/-.

(P.V. HARDAS)
JUDGE.

ed's.