IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P. Nos.18968 & 18969 of 1996

R. Rajabather ... Petitioner in both the W.Ps.

Vs.

1. The Presiding Officer,
   Labour Court,
   Vellore.

2. The Management of Ambur
   Co-operative Sugar Mills Ltd.,
   Vadaputhupet, Ambur,
   North Arcot Ambedkar District. ... Respondents in both the W.Ps.

* * *

Writ Petitions filed under Article 226 of the Constitution of India praying for the reliefs as stated therein.

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For petitioner : Mr. N.G.R. Prasad for M/s. Row and Reddy.

For respondent-2 : Mr. N. Balasubramanian

* * *

COMMON ORDER

Writ Petition No.18968 of 1996 has been filed praying to issue a writ of certiorarified mandamus calling for the records of the first respondent relating to I.D. No.17 of 1992 and quash the award dated 13.9.1993 and direct the second respondent management to give the petitioner all the benefits and award costs.

2. Writ Petition No.18969 of 1996 has been filed praying to issue a writ of certiorarified mandamus calling for the records

of the first respondent relating to Complaint No.4 of 1987, quash the award dated 13.9.1993 passed in Complaint No.4 of 1987 and direct the second respondent management to give the petitioner all the benefits and award costs.

3. The case of the petitioner is that he joined the services of the second respondent Management as a Fieldman and was later promoted as Cane Assistant and in the year 1971, the petitioner was promoted as a Senior Cane Assistant. In the year 1983, the petitioner was issued with a charge sheet alleging certain misconduct and the second respondent conducted a farce enquiry against the petitioner and passed an order demoting the petitioner as a Junior Cane Assistant for a period of two years. As against the order of punishment, the petitioner raised an industrial dispute before the Labour Court, Madras in I.D. No.679 of 1984 and upon the formation of the first respondent Labour Court at Vellore, the same was renumbered as I.D. No.17 of 1992. While so, when the dispute regarding the demotion of the petitioner was pending before the first respondent Labour Court, on 31.12.1986, the second respondent Management issued yet another charge sheet against the petitioner alleging certain other misconducts and consequently, on 11.8.1987, it dismissed the petitioner from service, without even filing a petition before the Labour Court for approving their action in dismissing the petitioner from service. As against the order of dismissal, the petitioner filed a departmental appeal before the Managing Director of the second respondent Mills on 26.8.1987, but by an order dated 14.11.1987, the said appeal was dismissed by the second respondent Management. On 17.11.1987, the petitioner filed Complaint No.4 of 1987 against the second respondent Management for having contravened the provisions contained in Section 33 of the Industrial Disputes Act, 1947. Thereupon, the Management filed Approval Petition No.1 of 1989 before the Labour Court, seeking approval of the dismissal order passed by them against the petitioner, but the Labour Court rejected the said petition by its order dated 29.3.1989 and the second respondent Management filed Writ Petition No.5857 of 1989 against the order of the Labour Court passed in Approval Petition No.1 of 1989. However, this Court, by order dated 26.6.1990, disposed of the said writ petition with a direction to the Labour Court to take up the complaint after giving proper opportunity to the second respondent Management within a period of eight weeks. Ultimately, on 13.9.1993, the Labour Court dismissed I.D. No.17 of 1992 as well as Complaint No.4 of 1987. Hence the writ petitions.

4. During arguments, the learned counsel appearing on behalf of the petitioner would submit that the labour court decided whether the enquiry held by the second respondent/management was fair and proper, but it did not go

into the question whether the charges were proved based on the materials and punishment imposed by the management was justified and commensurate with the charges; that the labour court has failed to see that the management has not taken approval after dismissing the petitioner when admittedly the dispute relating to demotion was pending; that the labour court has erred in dismissing the complaint No.4/87 filed against the dismissal order merely on the ground that the dispute relating to demotion was dismissed by him; that merely because the labour court dismissed the dispute relating to demotion, it does not follow that the dismissal order passed by the management is justified; that the complaint is not maintainable; that the provisions of Section 33(2)(b) application was not filed simultaneously and one month's notice pay was not given; that Section 33(2)(b) violation has got to be decided even if the main industrial dispute is disposed of; that the dismissal is void because approval was not applied for immediately. In support of these arguments, the learned counsel would cite two judgments reported in 1963(1) LLJ 679 (P.H.Kalyani v. Air France) and (ii) 1965 (2) LLJ 128 (Tata Iron and Steel v. S.N.Modak).

5. So far as the first judgment cited above is concerned, it is held therein:

> "The main point which was raised in this appeal is now concluded by the Strawboard Manufacturing Company Ltd., - Vs. - 1962 (1) L.L.J. 420. This Court has held in that case that, "the proviso to Sec.33(2)(b) contemplates the three things mentioned therein, namely -
> (1) dismissal or discharge
> (2) payment of wages and
> (3) making of an application for approval.
>
> To be simultaneous and to be part of the same transaction so that the employer when he takes the action under Sec.33(2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time."
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> It was further held therein that, "the employer's conduct should show that the three things contemplated under the proviso are parts of the same transaction and the question whether the application was made as part of the same transaction or at the same time when the action was taken would be a question of fact and will

depend upon the circumstances of each case."

So far as the second judgment cited above is concerned, it is held therein:

> "The application of the appellant can, in a sense, be treated as incidental proceeding; but it is a separate proceeding all the same and in that sense, it will be governed by the provisions of Sec.33(2)(b) as an independent proceeding. It is not interlocutory proceeding properly so called in its full sense and significance; it is a proceeding between the employer and his employee who was no doubt concerned with the main industrial dispute along with other employee; but it is nevertheless a proceeding between two parties in respect of a matter not covered by the said main dispute. It is therefore difficult to accept the argument that a proceeding which validly commences by way of an application made by the employer under Sec.33(2)(b) should automatically come to an end because the main dispute has in the meanwhile been decided. What is the order that should be passed in such a proceedings is a question which cannot be satisfactorily answered unless it is held that the proceedings in question must proceed according to law and dealt with as such.
>
> There is another aspect of this matter to which reference must be made. Sec.33-A makes a special provision for adjudication as to whether any employer has contravened the provisions of Sec.33. This Section has conferred on industrial employees a very valuable right of seeking the protection of the industrial tribunal in case their rights have been violated contrary to the provisions of Sec.33. Sec.33-A provides that wherever any employee has a grievance that he has been dismissed by his employer in contravention of Sec.33(2), he may make a complaint to the specified authorities and such a complaint would be tried as if it was an industrial dispute referred to the tribunal under Sec.10 of the Act. In other words, the complaint is treated as an independent industrial proceeding and an award has to be pronounced on it by the tribunal concerned."

6. In reply, the learned counsel appearing on behalf of the second respondent/management would submit that the order passed by this Court in W.P.No.5857 of 1989 thereby setting aside the order of the Labour court in Approval Petition No.1/1988 became final, as there was no appeal preferred by the other side. The learned counsel would cite a judgment reported

in 1978 II LLJ 1 (Punjab Beverages v. Suresh Chand) wherein it is held:

> "Section 33 enables a workman aggrieved by such contravention to make a complaint in writing in the prescribed manner to the Tribunal and it say that on receipt of such complaint, the Tribunal shall adjudicate upon it as if it is a dispute referred to it in accordance with the provisions of the Act. It also requires the Tribunal to submit its award to the appropriate Government and the provisions of the Act would then apply to the said award. Section 33A thus gives to a workman aggrieved by an order of discharge or dismissal passed against him in contravention of S.33A thus gives to a workman aggrieved by an order of discharge or dismissal passed against him in contravention of S.33, the right to move the Tribunal for redress of his grievance without having to take recourse to S.10."
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> "The appellant had contravened S.33(2)(b) in dismissing the workman but such contravention did not have the effect of rendering the order of dismissal void and inoperative and hence the workman is not entitled to maintain the application for determination and payment under S.33C(2)."

Yet another judgment would be cited by the learned counsel reported in 2002-I-LLJ 834 (Jaipur Zila S.B.V. Bank Ltd., v. R.G. Sharma) wherein it is held:

> "Another Bench of three learned Judges in Punjab Beverages Pvt. Ltd., Chandigarh v. Suresh Chand and Anr. AIR 1978 SC 995 : 1978 (2) SCC 144 : 1978-II-LLJ-1 has expressed the contrary view that non-approval of the order of dismissal or failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative; failure to apply for approval under Section 33(2)(b) would only render the employer liable to punishment under Section 31 of the Act and the remedy of the employee is either by way of a complaint under Section 33-A or by way of a reference under Section 10(1)(d) of the Act."
>
> "The Supreme Court observed that the proviso to Section 33(2)(b) was mandatory. The view that discharge or dismissal of workman by employer in contravention of the mandatory proviso did not render it inoperative or void, defeated the very purpose of the said proviso and it became

meaningless."

> "If approval for discharge or dismissal was not given, nothing more was required to be done by the employee (workman)".

7. Bases on these judgments, the learned counsel would submit that the point for consideration is that on the date of filing of his writ petition, the legal position was 1978 II LLJ 1 (supra). Merely because there was a contravention under Section 33(2)(b), the order of termination is not vitiated. In this case, the petitioner knew that the management filed a petition under Section 33(2)(b), but since the petition filed under Section3 3(2)(a) was pending, the labour court dismissed the 33(2)(b) petition.

8. Learned counsel would cite a judgment of the Full Bench reported in AIR 1981 Jammu & Kashmir 21 (Abdul Salam v. State) wherein it is held:

> "A judgment inter partes of a competent court in a previous writ petition would operate as res judicata in a subsequent suit between the same parties, where the issues directly involved in the two proceedings are the same, irrespective of the fact whether or not the decision in the earlier writ petition was founded on a view contrary to the one subsequently expressed by the Supreme Court in a different case. The correctness or otherwise of the earlier decision is wholly irrelevant whether the conditions for the application of the rule of res judicata are satisfied in the latter case."

Citing the above decision, the learned counsel would submit that once a matter is agitated and an order is passed, it is binding on both parties.

9. The learned counsel would end up saying that I.D.No.17/92 and Complaint No.4 of 1987 were taken up together and both were dismissed as they have no merit and would seek to dismiss both the above writ petitions.

10. In clarification, the learned counsel for the petitioner would cite the judgment cited supra in 2002-I-LLJ 834 and submit that in the same judgment, it is held that 'the order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and

remains inchoate as it is subject to approval of the authority under the said provision.'

11. The learned counsel would further submit that the litigation is still on and the matter has not reached a finality of decision. He would further submit they raised a legal question before the labour court, which was not answered. Admittedly, when there is a case pending relating to demotion, they did not file an application which according to the Supreme court is bad, and would ask the employee to comply with the mandatory provision under Section 33(a); that the dispute is related to demotion, whereas the complaint relates to dismissal. On such arguments, the learned counsel would seek to allow the writ petitions as prayed for.

12. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, it comes to be known that in the year 1983, on some charges of misconduct, the Management has initiated departmental proceedings against the petitioner and having conducted an enquiry, which is remarked as a 'farce' by the petitioner, the second respondent Management has awarded a punishment of demotion to the cadre of Junior Cane Assistant from that of Senior Cane Assistant and aggrieved, the petitioner has raised an Industrial Dispute in I.D.No.679 of 1984 before the Labour Court, which was transferred to the Labour Court, Vellore on its formation and re-numbered as I.D.No.17 of 1992. It further comes to be seen that during the pendency of the said Industrial Dispute, the second respondent Management has issued another charge memo. dated 31.12.1986 alleging certain other misconducts and ultimately, dismissed the petitioner from service on 11.8.1987. In this backdrop, alleging that when an Industrial Dispute is pending before the Labour Court regarding earlier punishment of demotion inflicted on him, the Management is duty bound to get the approval for his dismissal from the Labour Court as required under Section 33(2)(b) of the Industrial Disputes Act, the petitioner has filed the Complaint No.4 of 1987 before the Labour court. At this stage, the Management has filed the Approval petition in Approval Petition No.1 of 1988 under Section 33(2)(b) of the Industrial Disputes Act seeking approval of the dismissal of the petitioner and since the same was dismissed by the Labour Court on 29.3.1989, the Management has filed W.P.No.5857 of 1989 before this Court and while allowing the said writ petition, a learned single Judge of this Court has directed the Labour Court to conduct the enquiry in the Complaint No.4 of 1987 filed by the petitioner.

13. Now, the grievance of the petitioner is that the Labour Court, without affording him any opportunity to prove his innocence, has allowed the stand taken by the Management and

dismissed his complaint lodged in Complaint No.4 of 1987 as a consequential one to the main Industrial Dispute, without conducting any separate enquiry in the same, which is mandatory under law.

14. A careful perusal of the Award passed by the Labour Court in I.D.No.17 of 1992 would show that just framing the point that 'whether the departmental enquiry has been conducted in the manner known to law', the Labour Court has proceeded to dissect the case without having a mind to deal with the charges framed against the workman. In such a serious case of dismissal from service, without conducting the enquiry in the manner known to law observing the legalities such as framing the points regarding the charges and discussing them in the manner required and with due opportunity for both parties to be heard as required under law, the Labour court has simply concluded that the departmental enquiry has been conducted by the Management with sufficient opportunity for the workman.

15. Even regarding the complaint filed by the petitioner in Complaint No.4 of 1987, the Labour Court has dismissed the same on ground that since the main I.D. itself was dismissed, the complaint should also be dismissed. This is not the manner in which the Labour Court is expected to pass orders in the matters filed by the workman under Section 33(2)(b) alleging non-compliance of the provisions of Section 33 by the Management while passing orders of dismissal of the workman. Section 33A (b) of the Industrial Disputes Act mandates that '... 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 apply accordingly'.

16. When such is the mandatory provision of law, without conducting any enquiry as required under law, the Labour Court has proceeded to dismiss the said complaint filed by the petitioner as a consequential one to the main I.D. Therefore, without going into the merits of the case, this Court is of the view that it is a matter that should be remitted back to the Labour Court for conducting fresh enquiry in both the matters with due opportunity for both parties to be heard and dispose them of in the manner known to law and hence the following order:

In result,
(i) both the above writ petitions succeed and they are allowed.
(ii) The Award dated 13.9.1993 made in I.D.No.17 of

1992 and the Order dated 13.9.1993 made in Complaint No.4 of 1987 by the Labour Court, Vellore are quashed.

(iii) The subject is remitted to the Labour Court, Vellore for conducting fresh enquiry in both the I.D.No.17 of 1992 and the Complaint No.4 of 1987 after framing necessary points, as mentioned supra and with due opportunity for both parties to be heard and pass orders on merits and in accordance with law within six months from the date of receipt of a copy of this order.

However, there shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gs/Rao

To

1.The Presiding Officer,
Labour Court,
Vellore.

2.The Section Officer,
VR Section, High Court, Madras.

+2ccs to M/s.Row & Reddy, Advocates Sr 9319 and 9320

SMK (CO)
km/14.3.

W.P.Nos.
18968 and 18969/1996.