

The Management, Vs B.Karunanithi,

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Court : Chennai

Decided On : Apr-02-2025

Judge : Honourable Dr.Justice a.D.Maria Clete

Appeal No. : WP/2948/2020

Appellant : The Management,

Respondent : B.Karunanithi,

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction) RESERVED ON : 27.03.2025

PRONOUNCED ON : 02.04.2025

PRESENT: THE HONBLE DR. JUSTICE A.D. MARIA CLETE W.P.No. 2948 of 2020 and WMP No.3428 of 2020 and 4778 of 2023 The Management, Chemplast Sanmar Limited, Rep. by its General Manager (Legal) Plant IV, Raman Nagar, Mettur, Salem - 636 403 . Petitioner Vs.

1. B. Karunanithi S/o. Balakrishnan, E38, Chemicals Colony, Mettur Dam RW2, Salem

2. M.Selvaraju S/o. Muthsamy, 4A/44, Vaideeswara Nagar, Raman Nagar, Mettur Dam 3
3. A.Srinivasan S/o. AbathSahayam C32, Chemicals Colony, Mettur Dam RS2, Salem
4. P.Natarajan S/o. Perumal 1 of 54 Raman Nagar, Mettur Dam 3
5. K.Annamurthy 5A/58, Vaideeswara Nagar Raman Nagar, Mettur Dam 3
6. P.Pandian S/o. Pandaram Pillai, E-91, Chemicals Colony Mettur Dam RS2, Salem
7. G.Andikalai S/o. Gurusamy, E-51, Chemicals Colony Mettur Dam RS2, Salem
8. G.Venkatarajulu S/o. Govindarajulu E-50, Chemicals Colony Mettur Dam RS2, Salem
9. S.V.Umamaheswaran S/o. S G Viswanathan E-25, Chemicals Colony,Mettur Dam, RS2, Salem
10. S.Usha

W/o. Late D.Selvam Raman Nagar, Mettur 3 11.S.Vikram S/o. Late D.Selvam Raman Nagar, Mettur 3 12.S.Ilakiya D/o. Late D.Selvam 2 of 54 Raman Nagar, Mettur 3 13.A Sundaresan S/o P S Ananthanarayanan, Sri Jayalakshmi Nivas 114 Shanmuga Nagar Konur, Mettur 4 14.R Senthilkumar S/o. Ramanathan, 4-A1, Vaideeswara Nagar Raman Nagar, Mettur 3 15.M Venkatesan S/o. Madhappan 3-A4, Vaideeswara Nagar Raman Nagar, Mettur 3 16.S Panneerselvam S/o. Sambasivam 3-3A, Vaideeswara Nagar Raman Nagar, Mettur 3 17.M Saravanakumar S/o. V K Muthusamy Murugan Nagar Raman Nagar, Mettur 3 18.B Suresh Kumar S/o. G.Balan, E45, Chemicals Colony, Mettur Dam RS 2 19.S Selvaraj, 3 of 54

S/o. K Sundaram 5-A/39, Vaideeswara Nagar Raman Nagar, Mettur 3 20.R Suresh S/o Rajaram, Desai Nagar, Mettur Dam RS2 21.A Shanmugam S/o. Angamuthu 5A/6, Vaideeswara Nagar, Raman Nagar, Mettur -3 22.S Thangaraj S/o. Sembannan 4A/3, Vaideeswara Nagar, Raman Nagar, Mettur - 3

23. P Mayilsamy, S/o. Pachamuthu 4A/5, Vaideeswara Nagar Raman Nagar, Mettur 3

24. K Govindaraj S/o Kannusami 4A/6, Vaideeswara Nagar Raman Nagar, Mettur 3

25. S Murali S/o. A Srikandan 14 R K Nagar Saibaba Colony, Mission Post Kovai 11 4 of 54

26. M Saravanan S/o. R Manickam 3A/13, Vaideeswara Nagar Raman Nagar, Mettur 3

27. G Allimuthu S/o Gopal Konus Post, Mettur - 4

28. K Ramasamy S/o Kuppusamy Sankari Taluk, Salem

29. N Varadharajan S/o.Natarajan Koneripatti, Poovarampatti, Sankari Taluk, Salem.

30. M Subramanian S/o. MaraiyaAchari Near Vinayagarkovil Mecheri, Salem

31. A Mohan S/o Ammasi 3A/7, Vaideeswara Nagar Raman Nagar, Mettur 3

32. S Selvaraj S/o. Subramanian 5 of 54 5A/49, Vaideeswara Nagar Raman Nagar, Mettur 3

33. D Prabhakaran, S/o. Devasahayam 3A/12, Vaideeswara Nagar Raman Nagar, Mettur 3

34. N Shanmugam S/o. Navadeedhan NC36, Chemicals Colony, Mettur Dam RS2

35. C Nagarajan S/o. Chinnasamy, Mettur Dam 2 36.M Kalaiarasan S/o. Madhusamy 5A/4, Vaideeswara Nagar Raman Nagar, Mettur 3

37. A Ravi S/o Appu 3A/1, Vaideeswara Nagar Raman Nagar, Mettur 3

38. D Boopathy S/o. Duraisamy 11-1/98B, Pudhuchampalli Mettur Dam 3

39. KL SureshBabu S/o. K V S Lakshmanan 6 of 54 A79, Veena Apartments Anna Nagar, Madurai 625 020

40. G.Ashokan S/o P Govindaraju E66, Chemicals Colony Mettur Dam RS (dead, LRs not brought on record)

41. K Balaji

S/o. Kandasamy Plot 119, Door No.45, Kamarajan Salai (Ground floor) Alwarthirunagaram Chennai - 600 087. 42.T.Gnanaprakasam, S/o Thangasamy 4A/24, Vaideeswara Nagar Raman Nagar, Mettur 3 Respondents 1 to 42 Prayer in W.P.No.2948 of 2020 To issue a writ of certiorari or any other appropriate writ, order or direction in the nature of writ to call for the records connected with the common

order dated 17/08/2019 made in Nos. 41 of 2010 to 62 of 2010 and

C.P.Nos. 1,6,9, 30 to 35 and 37 to 45 of 2012 on the file of the Labour Court, Salem and quash the same. Prayer in WMP No.3428 of 2020 To grant interim stay of all further proceedings pursuant to the common

order dated 17/08/2019 made in Nos. 41 of 2010 to 62 of 2010 and

C.P.Nos.1,6,9,30 to 35 and 37 to 45 of 2012 on the file of the Labour Court, 7 of 54 Salem pending disposal of the writ petition. Prayer in WMP No.4778 of 2023 To vacate the stay granted on 07.02.2020 in WMP No.3428 of 2020 in W.P.No.2948 of 2020. Appearance of Parties: For Petitioner : Mr.S.Ravindran, Senior Counsel For Sai Raaj Associates assisted by Mr.S.Sai Prasad, Advocate For all Respondents except R40 : Mr.NGR Prasad, Advocate For V.Ajoy Khose, Advocate For Respondent 40 : Dead, steps not taken for bringing LRs on record.

JUDGMENT

Heard.

2. Two stalwarts of the Labour Bar have appeared before this Court

and addressed the matter with thoroughness and distinction, leaving no aspect unexplored. However, the controversy lies within a narrow compass. The issue for consideration is whether the respondent workmen can maintain a claim for back wages under Section 33C(2) of the Industrial Disputes Act, 1947, solely on the ground that their dismissal was effected without the prior approval mandated under Section 33(2)(b) of the Act- 8 of 54 when the legality of such dismissal has not yet been adjudicated by a competent forum.

3. It is pertinent to note that the issue at hand is no longer res integra.

A Constitution Bench of the Supreme Court, in its authoritative Judgment

in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma & Others, reported in (2002) 2 SCC 244, has conclusively settled the legal position. At paragraphs 14 to 19 of the judgment, the Court held as follows:-

14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of 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. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate

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or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the

order of approval instead of making efforts to raise an

industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the

order of discharge or dismissal is inoperative for contravention

of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative

because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

15. The view that when no application is made or the one

made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an

order is set aside under Section 33A, cannot be accepted. In

our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more

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comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any

order is passed on it, on its merits, to take a position that such

order is not inoperative or void till it is set aside under Section

33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.

16. Section 31 speaks of penalty in respect of the offences

stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33A. There is nothing in Sections 31, 33 and 33A to suggest otherwise even reading them together in the context. These Sections are intended to serve different purposes.

17.As already noticed above, the Constitution Bench of this Court in P.H. Kalyani vs. M/s. Air France Calcutta has referred to Strawboard Manufacturing Co. vs. Gobind and approved the view taken in the said decision as regards the requirements of the proviso to Section 33(2)(b). Unfortunately in Punjab Beverages Pvt. Ltd. vs. Suresh Chand, the earlier two cases of Strabboard and Tata Iron & Steel Co. were not noticed

11 of 54 touching the question. It is true that in S.Ganapathi & others vs. Air India and another, there is no reference to Punjab Beverages. But the view taken in two earlier decisions of Strabboard and Tata Iron & Steel Co. is followed on the

question and rightly so in our opinion.

18. In view of what is stated above, we respectfully agree with

and endorse the view taken in the case of Strabboard and Tata Iron & Steel Co. and further state that the view expressed in Punjab Beverages on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly.

19. In these appeals, respondent No. 1 was employed as Clerk- cum- Cashier with the appellant. He was dismissed from service. As certain proceedings were pending before the Industrial Tribunal, Jaipur, an application seeking approval of the Tribunal for the said dismissal was submitted by the appellant before the Tribunal under Section 33(2)(b). The said application was contested on various grounds by the respondent including that the appellant-Bank had failed to comply with the provisions of Section 33(2)(b) as salary for one month was not paid. The Tribunal, on facts, found that the appellant failed to comply with the provisions of Section 33(2)(b) and in that view dismissed the application. The appellant challenged the order of the Tribunal before the High Court in writ petition No. 666 of 1980. The same was dismissed concurring with the order passed by the Tribunal.

4. As observed in paragraphs 17 and 18 of the aforesaid judgment, the

Supreme Court affirmed the earlier two decisions in Strawboard Manufacturing Co. v. Gobind, AIR 1962 SC 1500, and Tata Iron & Steel Co. v. S.N. Modak, AIR 1966 SC 380, and expressly held that the view taken in Punjab Beverages Pvt. Ltd., Chandigarh v. Suresh Chand & Another, (1978) 2 SCC 144, does not lay down the correct position of law. 12 of 54

5. In Punjab Beverages Pvt. Ltd. (supra), a three-Judge Bench of the

Supreme Court categorically held that an employee cannot invoke the jurisdiction of the Labour Court under Section 33C(2) of the Industrial Disputes Act for

claiming wages, as the employers failure to obtain the requisite approval under Section 33(2)(b) does not, by itself, render the

order of dismissal void. The Court held as follows:-

We accordingly hold that the appellant contravened section 33(2) (b) in dismissing the workmen in both the appeals but such contravention did 'not have the effect of rendering the orders of dismissal void and inoperative and hence the workmen were not entitled to maintain the applications for determination and payment of wages under section 33C(2).

6. In the same judgment, the Supreme Court also held that proceedings

under Section 33 are summary in nature. Therefore, a workman who seeks to challenge his dismissal must either file a complaint under Section 33A or raise an industrial dispute and obtain a reference under Section 10(1) of the Industrial Disputes Act, as these provide an effective remedy. The Court observed as follows:-

In the employer contravenes the provisions of section 33 and discharges or dismisses a workman without obtaining permission or approval of the Tribunal, he would render himself liable to punishment under section 31(1) and this 13 of 54

punishment can extend even to imprisonment. Moreover, the aggrieved workman would not only have the remedy of moving the appropriate Government for making a reference under section 10, but he would also be entitled to make a complaint to the Tribunal under section 33A and on such reference or complaint, the order of discharge or dismissal would be liable to be subjected to a much greater scrutiny than what would be available before a Tribunal exercising the limited jurisdiction conferred under section 33. The workman is thus not left without remedy, though according to the trade union movement, the remedy provided under sections, 31, 10 and 33A may not be as adequate as the workman might

wish it to be.

7. Now that the larger Bench of the Supreme Court has disapproved

the decision in Punjab Beverages (supra) in its ruling in Jaipur Zila (supra), any judgment rendered prior to the latter-wherein the ratio in Punjab Beverages was followed-cannot be regarded as laying down a sound legal precedent. Before turning to the citations submitted by the learned senior counsel for the Management, it is pertinent to note that Section 33 of the Industrial Disputes Act was not part of the original enactment of 1947; it was introduced by Amendment Act 36 of 1956, with effect from 10.03.1957.

8. Since the Industrial Disputes Act seeks to resolve all industrial

14 of 54 disputes through either conciliation or adjudication, it contains special provisions to ensure that conditions of service remain unchanged during the pendency of such proceedings. If an employer intends to dismiss workmen - whether they are connected to the dispute or not-he must obtain prior permission from the authority before whom the proceedings are pending. This requirement applies to both conciliation and adjudication proceedings.

9. Initially, the Industrial Disputes Act provided for an aggrieved

workman to file a complaint under Section 33A directly before the adjudicating authority. In such cases, the adjudicatory body could treat the complaint as if it were a dispute referred under Section 10(1) of the Act. This enabled the workman to bypass the otherwise cumbersome process of securing a reference from the appropriate Government and instead approach the adjudicating authority directly. However, at that stage, there was no provision for filing a complaint before the Conciliation Officer.

10. This lacuna was subsequently addressed by the Industrial Disputes

(Amendment) Act, 1982 (Act 46 of 1982), through which Section 33A was amended to allow a workman to file a written complaint before the Conciliation Officer as well. However, unlike a complaint under Section 15 of 54 33A that is

filed before an adjudicating authority and treated as a deemed reference under Section 10(1), the newly inserted provision-Section 33A(a)-did not confer any adjudicatory powers upon the Conciliation Officer. Instead, the Conciliation Officer is empowered only to consider such complaints in the course of conciliation efforts. Section 33A(a), as introduced, reads as follows:-

to such Conciliation Officer or Board, and the Conciliation Officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute

11. Therefore, in the absence of any provision offering effective relief

to the workman upon filing a complaint, employers would not treat the requirements under Section 33 seriously when proceedings were pending before the Conciliation Officer. Their approach further reinforced by the ratio laid down in Punjab Beverages (supra). Although a violation of Section 33 constitutes a penal offence under Section 31 of the Industrial Disputes Act, such violation did not, by itself, provide any substantive relief to the affected workman. Recognizing this lacuna, the larger Bench in Jaipur Zila (supra) held that compliance with Section 33 is mandatory, and any action taken by the employer in violation of it would be void ab initio. This position was emphasized particularly because the breach amounts to a 16 of 54 specific penal offence under the Act.

12. The Supreme Court, recognizing that an employers failure to seek

permission for dismissal during the pendency of conciliation proceedings before the Conciliation Officer amounted to a violation-and noting the absence of any specific adjudicatory mechanism in such cases-explicitly upheld the right of the workmen to claim wages before the Labour Court. The Court accordingly directed that the workmen be treated as if they had not been dismissed from service.

13. Learned senior counsel for the Management, Mr. S. Ravindran,

while realizing the true legal effect, relied on the decision of the Supreme Court in Rajasthan State Road Transport Corporation & Anr. v. Satya Prakash, reported in (2013) 9 SCC 232. In that case, the scope of Section 33A was examined, and the

Court held that in a complaint under Section 33A, the adjudicating authority is required to examine the merits of the dispute and cannot dispose of the matter solely on the technical ground of a violation of Section 33(2)(b). In that case, the workman, having failed in his complaint under Section 33A, sought liberty to independently raise the issue of non-compliance with Section 33(2)(b), which was declined. 17 of 54

14. Learned senior counsel also placed reliance on two decisions of

this Court-The Management of Together Textile Mills India Private Ltd. v. The Presiding Officer, Labour Court, Coimbatore & Ors., reported in 2012 (2) LLJ 521 (Mad), and an unreported judgment in Codimen v. The Management of Indo Shell Mould Ltd. & Anr. in W.P. Nos. 480 & 5482 of 2004, dated 3.7.2008. In the first case (Together Textile Mills), the issue was whether a legal strike notice issued in respect of a public utility service could give rise to a deemed conciliation proceeding so as to attract the applicability of Section 33. In that context, this Court observed in paragraph 21 as follows:-

In view of the above, this Court is of the opinion that since the contesting workmen have not established that the petitioner Mill is a Public Utility Service, the consequential notice to the jurisdictional Conciliation Officer and the deemed conciliation provided under Section 20(1) of the I.D.Act will not be attracted. Therefore, the question of invoking the ratio in Jaipur Zila case for claiming wages under the premises that there was violation of Section 33(1) will not arise.

15. In the second decision (Codimen case), this Court held that in the

case of an individual dispute falling under Section 2A of the Industrial Disputes Act, the provisions of Section 33 would not be attracted. In 18 of 54 paragraph 9, the Court observed as follows:- In the present case, admittedly, all the petitioners have raised dispute before the Assistant Commissioner of Labour III under Section 2A of the I.D.Act. This was under the

hope that they can get their relief in terms of the judgment

of the Supreme Court in Jaipur Zila Sahakari Boomi Vikas Bank Ltd Case (cited supra). Their petitions were allowed to be withdrawn so as to pursue their remedy before the Labour Court under Section 33C(2) of the I.D.Act. This court finds that proper remedy for the petitioners is only to get the industrial dispute adjudicated by the competent Labour Court and Section 33C(2) of the I.D.Act cannot be a remedy when there are so many disputed questions of rights between the parties.

16. Drawing support from these decisions, the learned senior counsel further advanced a twofold contention: first, that no valid conciliation proceedings were pending before the Conciliation Officer at the relevant time, and therefore, there was no violation of Section 33(2)(b) of the Industrial Disputes Act; and second, that in the absence of such violation, the contesting respondent could not have claimed full back wages before the Labour Court. Central to this argument was the question of when a conciliation proceeding can be deemed to have commenced. In support of this submission, reliance was placed on the following three judgments:- 1. The Management of Menon Pistons Vs. Labour Officer-II & anr., 19 of 54 reported in Manu/TN/1007/2000

2. State Banks Staff Union (Madras Circle) Vs. State Bank of India reported in 1991 (1) LLJ 163 (DB Madras)

3. KN Asokan Vs. Presiding Officer, Labour Court & Ors. reported in 2010 (1) LLJ 438 Mad

17. In the first judgment (Menon Pistons case), the emphasis was on

the principle that in the case of a non-public utility service, the initiation of conciliation proceedings lies within the discretion of the Conciliation Officer. It was held that unless the Conciliation Officer expressly indicates his intention to commence conciliation, issues a formal intimation to that effect, and fixes a specific date for the proceedings, such conciliation cannot be deemed to have commenced. In the absence of such formal notice, the existence of pending conciliation proceedings cannot be presumed.

18. In the second judgment (State Bank case), the Court observed that

multiple disputes may arise between workmen and the management, but not all such disputes would necessarily lead to the initiation of conciliation by the Conciliation Officer. Mere talks or negotiations between the parties do not, by themselves, amount to conciliation proceedings. In support of this 20 of 54 proposition, reliance was placed on the following passage from paragraph 11 of the judgment, which reads as follows:-

Merely because the Conciliation Officer conceived the idea of holding a discussion on coming to know of the particular attitude of either the employer or employees with regard to the implementation of the settlement, after the same has been duly arrived at, and also being confronted with belligerent and uncompromising attitude of the parties, may be resulting in an explosive situation, that will not make the said proceedings conciliation proceedings in the eye of law.

19. In the third judgment (K.N. Asokan case), the Court found that the

matter involved retrenchment. Upon protest by the workman, he was offered a position in a new role as a baker. However, since he did not express his willingness to accept the new post, the case did not amount to either a dismissal or a discharge. Consequently, the provisions of Section 33(1) or Section 33(2) of the Industrial Disputes Act were held to be inapplicable. 20. Learned senior counsel also placed reliance on the judgment of the Supreme Court in Management, Essorpe Mills Ltd. v. Presiding Officer, Labour Court & Ors., reported in (2008) 7 SCC 594. In that case, the Supreme Court held that the ratio laid down in Jaipur Zila would not apply, 21 of 54 as the strike notice issued by the union was not in accordance with the requirements of the Act. Consequently, it could not be treated as a valid strike notice within the meaning of the deemed provision under Section 22 of the Industrial Disputes Act. In that view of the matter, the Court declined to grant relief to the workmen.

21. Learned senior counsel further contended that the remedy under

Section 33C(2) of the Industrial Disputes Act was not available to the respondent workmen for claiming wages based on an alleged infraction of Section 33. In support of this argument, he relied on the decision in *Municipal Corporation of Delhi v. Ganesh Razak & Anr.*, reported in

(1995) 1 SCC 235. This judgment, delivered prior to the decision in *Jaipur Zila*, involved daily-rated casual workmen who sought wages equivalent to those of regular employees without there being any prior adjudication of their claim.

22. Similarly, the decision relied upon was *State Bank of India v.*

Ram Chandra Dubey & Ors., reported in 2000 II LLJ 1660 (SC), where the Supreme Court reiterated that for a petition under Section 33C(2) to be maintainable, there must be a pre-existing right. Another decision cited was 22 of 54 *State of Uttar Pradesh & Anr. v. Brijpal Singh*, reported in (2005) 8 SCC

58. In that case, a three-judge Bench of the Supreme Court decided the

matter on 27.09.2005, without the benefit of considering the earlier larger Bench decision in *Jaipur Zila* (2002), and instead relied on *Punjab Beverages* (supra), which has since been expressly overruled and is no longer considered good law. So these three decisions cited -two of which merely affirm general principles relating to Section 33C(2) of the Industrial Disputes Act, and the third of which failed to take into account a binding larger Bench decision directly relevant to the present case.

23. Another submission advanced by the learned senior counsel was

that, in the absence of oral evidence, the Labour Court ought not to have proceeded with the computation of wages. In support of this contention, reliance was placed on the decision of the Honble Supreme Court in *State Bank of India, through its General Manager v. National Housing Bank & Others*, reported in (2013) 16 SCC 538.

24. Learned senior counsel also referred to the decision of the Supreme

Court in *Bikash Bhushan Ghosh & Ors. Vs. Novartis India Ltd & Anr.* reported in 2007 (5) SCC 591 and relied upon the following passage which 23 of 54 reads as follows:- Yet again appellants being workmen, their services were protected in terms of the Industrial Disputes Act, 1947. If their services were protected, an order of termination was required to be communicated. Communication of an order of termination itself may give rise to a cause of action. An

order of termination takes effect from the date of

communication of the said order. In that case, the Supreme Court referred to and quoted with approval an earlier decision in *State of Punjab v. Amar Singh Harika* (AIR 1966 SC 1313), wherein the Court laid down the following principle:

We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published

This was to contend that, as on the date the termination orders took effect upon their issuance to the respondent workmen, no conciliation proceedings were pending.

25. In light of the above objections, this Court, here and now, examines

whether the respondent workmen have made out a valid case. A total of 42 workmen initially filed individual claim petitions before the Labour Court 24 of 54 at Salem under Section 33C(2) of the Industrial Disputes Act. These claim petitions were registered as C.P. Nos. 41 to 62 of 2010, 1/2012, 6/2012, on different dates, and a total of 40 workmen are ultimately involved in the proceedings. The Management filed separate counter statements in response during May 2012 and subsequently submitted an additional counter statement dated 26.03.2014.

26. Before the Labour Court, a joint memo was filed seeking a joint trial

of all the claim petitions, which was duly permitted. It was further agreed that common evidence would be recorded in C.P. No. 41 of 2010 (B.Karunanithi, 1st Respondent in the W.P.). During the proceedings, the workmen relied on two documents-conciliation notices issued by the Conciliation Officer (Labour Officer, Salem)-which were marked as Ex.P1 and Ex.P2, dated 28.09.2007 and 01.10.2007, respectively. On the side of the petitioner Management, 75 documents were produced and marked as Ex.R1 to Ex.R75. The Management also filed written submissions dated 04.07.2019.

27. Though in paragraph 4(k) of the written submissions dated

25 of 54 04.07.2019, the Management stated that the amounts claimed by the workmen were not proved by acceptable evidence, they also referred to Exhibits R29 to R68-all dismissal orders issued to the workmen-which specifically indicated their last drawn wages. It is also relevant to note that, in the additional counter statement, the Management filed the following three documents:

a.Wage slips of the Petitioner for the months September 2007, October 2007 and December 2007 corresponding to their date of dismissal (Ex.R72 series) b. Statement showing details of last drawn wages by the Petitioner (Annexure-A) (Ex.R73) c. Statement showing month wise production from September 2007 till December 2012 (Annexure-B) (Ex.R74).

28. The Labour Court, by a common order dated 17.08.2019, computed

the amounts payable to the workmen, as reflected in paragraph 12 of the impugned order. It determined the monthly wages of each workman based on Exhibits R72 and R73 filed by the respondents, which contained salary details. For ten of the claimants, the salary period considered was from 04.12.2007 to 31.05.2010. For another twelve workmen, the salary period ranged from 20.10.2007 to 31.05.2010. Similarly, the Labour Court recorded different salary periods for different sets of claimants. 26 of 54

29. On the merits of the case, the Labour Court held that there was a

clear violation of Section 33, as the Management had failed to obtain approval for the dismissal of the workmen from the Conciliation Officer. It also rejected the Managements objections regarding the maintainability of the claim petitions, as well as the various decisions cited in support of their case (some of which were also referred to before this Court). The Labour Court concluded that the workmen were entitled to wages and directed that the amounts be paid to each of them within a period of two months, with interest at 6% per annum, failing which the amount would carry further interest at 9% per annum. It is this common order that is now under challenge before this Court.

30. In the writ petition that came up for hearing on 07.02.2020, notice

was ordered to the respondents, and an interim stay was granted for a period of four weeks. Upon receipt of notice, the individual workmen entered appearance through their counsel and filed W.M.P. No. 4778 of 2023 seeking to vacate the interim order. However, notice to the 40th respondent, G. Ashokan, could not be effected, as he had passed away. Consequently, the writ petition, insofar as it relates to him-namely, C.P. 27 of 54 No. 43 of 2012-stands abated. Despite being granted leave for private notice, no steps were taken to bring his legal representatives on record, and no affidavit of service has been filed to date.

31. On behalf of the contesting respondents, a typed set of documents

was filed, which included the bonus demand and charter of demands, the two conciliation notices marked as Ex.P1 and Ex.P2 (also marked as Ex.R11 and Ex.R12), along with subsequent conciliation notices dated 07.11.2007 (Ex.R17), 09.11.2007 (Ex.R18), 20.11.2007 (Ex.R19), 23.11.2007 (Ex.R20), and 03.12.2007 (Ex.R22), as well as a copy of the conciliation failure report dated 11.12.2007 (Ex.R23). Pursuant to the workers' demands, the Government issued G.O.(D) No. 565, Labour and Employment Department, dated 21.10.2010, referring the dispute relating to bonus and performance incentives for adjudication before the Industrial Tribunal, Tamil Nadu. In compliance with the Government Order, the Tribunal registered the dispute as I.D. No. 33 of 2010 and issued notice to the parties. Although the Management, in its additional counter statement, asserted that the factory had been closed on 24.12.2012, the respondents filed a copy of the

Registration and License to Work issued by the Directorate of Industrial Safety and Health. This document, obtained under 28 of 54 the Right to Information Act, indicated that the license for the plant was valid up to 31.12.2023, thereby contradicting the claim of closure.

32. An additional typed set of documents was also filed, which included

a copy of the dismissal order issued to S. Selvaraj dated 27.09.2007 (Ex.R45), along with the postal covers evidencing that the order was dispatched by the Management on 27.09.2007 and delivered on 28.09.2007, as indicated by the postal seal. Also included was a copy of the settlement entered into between the Management and the trade union under Section 12(3) of the Industrial Disputes Act before the Labour Officer, Salem, dated 21.10.2022 (Ex.R2).

33. Mr. N.G.R. Prasad, the doyen of the Labour Bar, ably assisted by

Mr. V. Ajoy Khose, submitted that the legal contours of what constitutes a conciliation proceeding before a Labour Officer were clearly laid down by the Supreme Court as early as 1959. In support of this, he referred to the

judgment in Andheri Marol Kurla Bus Service & Anr. v. State of

Bombay, reported in AIR 1959 SC 841, and relied on the following passage from paragraph 5 of the judgment, which reads as follows:- 5. It was next contended that on this interpretation the 29 of 54

conciliation proceedings could be prolonged much beyond what was contemplated by the Act and the termination would depend upon how soon a report is received by the appropriate Government. It is true that s. 12(6) of the Act contemplates the submission of the report by the Conciliation Officer within 14 days but that does not affect the pendency of the conciliation proceedings and if for some reason the Conciliation Officer delays the submission of his report his action (1) may be reprehensible but that will not affect the interpretation to be put on s. 20(2)(b) of the Act. Section 12 lays down the duties of the Conciliation

officer. He is required to bring about settlement between the parties and must begin his investigation without delay and if no settlement is arrived at he is to submit his report to the appropriate Government. No doubt s. 12 contemplates that the report should be made and the proceedings closed within a fortnight and if proceedings are not closed but are carried on, as they were in the present case, or if the Conciliation Officer does not make his report within 14 days he may be guilty of a breach of duty but in law the proceedings do not automatically come to an end after 14 days but only terminate as provided in s. 20(2)(b) of the Act. *Colliery Mazdoor Congress, Asansol v. New Beerbhoom Coal Co. Ltd* (1). As the conciliation proceedings were pending at the time when Louis Pereira was dismissed the appellants were rightly convicted under s. 31(1) read with s. 33 of the Act.

In that case, the employer was convicted for violating Section 31(1) of the Industrial Disputes Act, and the conviction was upheld by the Labour Court. The violation arose from the employers failure to obtain the requisite approval from the Conciliation Officer. 30 of 54

34. The learned counsel further placed reliance on the decision of the

Honble Supreme Court in *Lokmat Newspapers Pvt. Ltd. v. Shankarprasad*, reported in (1999) 6 SCC 275, and referred to the following excerpts from paragraphs 23, 24, and 25: 23. ..For the time being, it is sufficient to note that the question of violation of Section 33(1) of the I.D. Act has a direct nexus with the further question whether on 22.6.1982 when the impugned termination order was passed, conciliation proceedings were pending before the authority or not.

24. In order to answer these questions, it is necessary to note sub- section (4) of Section 12 of the I.D. Act which reads as under :

"(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him

for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at."

A mere look at this provision shows that if the Conciliation Officer finds during conciliation proceedings that no settlement is arrived at between the disputing parties, then after closing the investigation he has, as soon as practicable, to send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and has also to mention all other details as required to be mentioned

31 of 54 in the report under Section 12(4) of the I.D.Act.

25. The aforesaid statutory requirements leave no room for

doubt that after closing the investigation and after having arrived at the conclusion that no settlement is possible between the parties, the Conciliation Officer has to spend some more time before submitting his detailed written report about failure of consideration for information and necessary action by the State Government. In the very nature of things, therefore, such requirement will take at least a couple of days, if not more, for the conciliator after closing the investigation to enable him to send an appropriate report to the State Government .It is, therefore, difficult to appreciate how within half an hour after the closing of investigation by the conciliator and before his getting even a breathing time to prepare his detailed written report about failure of conciliation to be sent to the Government as per Section 12(4), the appellant could persuade itself to presume that conciliation proceedings had ended and, therefore, it was not required to follow the procedure of Section 33(1) and straightaway could pass the impugned order of retrenchment within 25 minutes of the closing of the investigation by the conciliator on the very

same day. Thus, on the express language of Section 12(4) the conclusion is inevitable that closer of investigation by 4.35 p.m. on 22.6.1982 did not amount to termination of conciliation proceedings by that very time. The argument of learned counsel for the appellant was that closer of investigation automatically amounted to termination of conciliation proceedings. This argument proceeds on a wrong premise that closer of investigation by the conciliator is the same as closer of conciliation proceedings. The legislature while enacting Section 12(4) has deliberately not used the words 'closer of conciliation' but, on the contrary, provided that

32 of 54 after closer of investigation something more was required to be done by the conciliator as laid down under Section 12(4) before he can be said to have done away with conciliation proceedings earlier initiated by him. On this

conclusion alone the decision rendered by the Division

Bench of the High Court that the impugned order of termination dated 22.6.1982 was issued by the appellant without following the procedure of Section 33(1) of the I.D. Act has to be sustained.

35. The learned senior counsel next referred to a Division Bench

judgment of this Court in Arasu Viraivu Pokkuvarathu Oozhiyar

Sangam v. State Express Transport Corporation Ltd. and Others, reported in (2006) 3 LLN 916, wherein it was held that, in the case of public sector undertakings, a violation of Section 33 of the Industrial Disputes Act could be challenged by way of a writ petition for setting aside an illegal order.

36. Two decisions were also cited-one by a learned Single Judge and the other being the affirmation of that order by a Division Bench-namely:

(1) Management of Bharathan Publication v. Labour Officer &

Another, (2009) 5 MLJ 95, and (2) Management of Bharathan Publication v. Labour Officer & Another, (2009) 6 MLJ 625. However, it 33 of 54 must be noted that the matter was taken up before the Honble Supreme Court, where the main writ petition itself was withdrawn by a learned senior counsel appearing for the petitioner, with the Court permitting such withdrawal. Consequently, the effect of both the aforementioned decisions stands nullified and no longer holds binding value.

37. The management also submitted the order dated 06.10.2010 passed in Civil Appeal No. 8579 of 2010, titled The Management of Bharathan Publication (P) Ltd. v. Bharathiyar Employees Mazdoor Sangh. The relevant portion of the said order is extracted below:-

In our opinion, if the workman concerned had a complaint that Section 33 of the Act has been violated, his remedy was to apply before the Labour Court under Section 33A of the Act. Instead, the workman appeared to have applied to the Labour Officer. The Labour Officer has only power of conciliation and not adjudication. Hence, it appears that the workman concerned was wrongly advised to approach the Labour Officer instead of the Labour Court. The appellant herein had challenged the order of the Labour Officer dated 20.12.2007 on which the Division Bench has passed the impugned order. Mr.P.P.Rao, learned counsel for the appellant, assisted by Mr.V.Karthic, Advocate has submitted that there was no proceeding pending before the Labour Officer when the dismissal order was passed. We are not deciding this dispute because Mr.P.P.Rao, Ld. Counsel for the appellant, submitted that the appellant wishes to withdraw the Writ

34 of 54

Petition before the High Court. We allow this prayer. On the facts of the case, we permit the workman concerned to approach the Labour Court under Section 33A of the Industrial Disputes Act, 1947, if not already

approached. If the workman approaches the Labour Court by filing a proper petition / application, the same shall be decided expeditiously in accordance with law uninfluenced by any observations made by the Division Bench or Single Judge of the High Court. We, consequently, allow the appellant to withdraw the Writ Petition which he had filed before the High Court.

38. In light of the fact that the very foundation of the Bharathan

Publication case has been rendered ineffective by the withdrawal of the writ petition before the Honble Supreme Court, this Court refrains from placing reliance on the two related decisions cited. That said, a broader reflection is warranted. In the months during which this Court have had the opportunity to hear labour matters, this Court have consistently noted that counsel on both sides approach their cases with commendable diligence and fervour, citing a wide array of decisions and leaving no legal argument unexplored. However, in their earnest effort to defend their clients, counsel must remain equally conscious of their responsibility to the Court. The citation of decisions that have no bearing on the factual matrix, or that are no longer binding or good law, does not assist the Court in the dispensation of justice. On the contrary, such references may inadvertently misdirect the Court and 35 of 54 lead to incorrect legal conclusions. As Justice V.R. Krishna Iyer once aptly observed, the illiteracy of the bench is the reflection of the illiteracy of the Bar. It is in this constructive spirit that the observation is made - as a gentle reminder of the shared responsibility we bear in upholding the integrity of legal proceedings in the pursuit of justice.

39. The next question that arises for consideration is whether the

impugned common order passed by the Labour Court withstands legal scrutiny. In its additional counter statement before the Labour Court, the management contended that out of the 40 claim petitions, C.P. Nos. 41 to 62 of 2010 were filed after a delay of two years, while C.P. Nos. 1, 6, 9, 30 to 35, and 37 to 45 of 2012 were filed after a delay of five years from the respective dates of termination. It was argued that the workmen had been pursuing remedies elsewhere, and that the delay had caused serious prejudice to the management. On this ground, the

petitions were alleged to be vexatious and liable to be dismissed.

40. In the present case, the claims were instituted under Section 33C(2)

of the Industrial Disputes Act, based on an existing legal right. It is well- settled that no period of limitation is prescribed under the Act for initiating 36 of 54 such claims. Reference may be made to the judgment of the Supreme Court in *Nityanand M. Joshi v. Life Insurance Corporation of India &*

Others, reported in (1969) 2 SCC 199, wherein it was categorically held

that the Limitation Act does not apply to proceedings under Section 33C(2). The Court held as follows:-

This Court in *Town Municipal Council, Athani v. The Presiding Officer, Labour Court, Hubli* has dissented from the decision of the Bombay High Court and has held that art. 137 of the Limitation Act, 1963, does not apply to applications under s. 33C(2) of the Industrial Disputes Act. This Court gave two reasons for coming to this conclusion. The first ground was that in spite of the changes made in the Indian Limitation Act, 1963, no drastic change was intended in the scope of art. 137 so as to include within it all -applications irrespective of the fact whether they had any reference to the Code of Civil Procedure or not. This Court held that in spite of the changes the interpretation of art. 181 of the Limitation Act, 1908, by this Court in *Bombay Gas Co. Ltd. v. Gopal Bhiva and Others* would apply to art. 137 of the Limitation Act, 1963. The second ground given by this Court was that it is only applications to Courts that are intended to be covered under art. 137 of the Limitation Act, 1963.

In our view art. 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a court. Further s. 4 of the Limitation Act, 1963, provides for the

contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed". Again under s. 5 it is only a court which is enabled to

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admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour ,Court is not a court within the Indian Limitation Act, 1963. It is not necessary to express our views on the first ground given by this Court in Town Municipal Council, Athani v. The Presiding Officer Labour Court, Hubli.

This effectively negates the contention raised by the respondents regarding the claims being barred by limitation.

41. The next question that falls for consideration is whether conciliation

proceedings were pending before the Labour Officer on the dates when the respondent workmen were dismissed. It is an admitted fact that the trade union to which the respondents belonged had raised an industrial dispute relating to bonus and a charter of demands as early as February 2007. The Labour Officer at Salem, who was the jurisdictional Conciliation Officer, issued a notice dated 28.09.2007 (marked as Ex.P1/Ex.R11), and stated that in view of the stay in strike by the workers with reference to the demands, he had directed the parties to appear before him and the letter reads as follows:-

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of 54 ?????????????????????? ?????????????????????? ?????????? ?????????????? ??????????
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42. In its notice published on 01.10.2007 (marked as Ex.P2 / Ex.R12), the management issued an appeal to the workers, which reads as follows:-

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43. Even while conciliation proceedings were pending before the

Conciliation Officer (Labour Officer, Salem), the management proceeded to enter into a settlement under Section 18(1) of the Industrial Disputes Act with another trade union on 05.10.2007 (marked as Ex.R13). The preamble to the said settlement reads as follows:- 39 of 54 Whereas the workmen belonging to the other union, Metkem Silicon Employees Union (SLM:605) which also participated in the negotiation for the same demand went on illegal Stay in Strike from 6.00 AM on 22.09.2007. Whereas the striking union, Metkem Silicon Employees Union, as directed in the peace committee meeting conducted by the Revenue Divisional Officer (RDO), Mettur on 27.09.2007, failed to resume duty. Whereas the Labour Officer, Salem called the Management and both the Unions for conciliation meeting on 28.09.2007.

44. Although the settlement was signed with a different union, it was

prepared by the management. Notably, the emphasized portion in the preamble to the settlement clearly acknowledges that the meeting convened pursuant to the

notice dated 28.09.2007 (marked as Ex.P1 / Ex.R11) was, in fact, a conciliation meeting. Following this, the Conciliation Officer issued further notices on 07.11.2007, 09.11.2007, 20.11.2007, 23.11.2007, and 03.12.2007 (marked as Ex.R17 to Ex.R20 and Ex.R22). As all the notices were identically worded, the text of the notice dated 07.11.2007 (Ex.R17), addressed to both parties, is extracted below:-

???????: ??????????????-1947 ??? ?????? ?????? ?????????? ???????
??????? 2? / 2?? - ??????????????? 40 of 54

????????? ??, ?????????? 4 - ?????????? ?????????????? ?????????? ???????
- ?????????????????? ??????? 12(1)?? ?????? ?????? ?????????????????? ??????????
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26-?? ?????? ?????? ?????????????? ?????????????? ?????????? ?????????? ?????????
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45. The conciliation talks conducted by the Labour Officer ultimately ended in failure. Consequently, the Conciliation Officer forwarded a failure report under Section 12(4) of the Industrial Disputes Act to the Government of Tamil Nadu, by his letter bearing Na.Ka.No.751/07 dated 11.12.2007 (marked as Ex.R23). Relevant portions of the said letter are usefully extracted below:-

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22.9.2007 ????? ???
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22.9.2007 ?????????? ?????????? ?????????? ?????????????????????????????????
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2.10.2007, 3.10.2007, 8.10.2007, 12.10.2007, 19.10.2007, 25.10.2007,
30.10.2007, 5.11.2007, 19.11.2007, 23.11.2007, 30.11.2007 ??????????
7.12.2007 ?????? ?????????????? ?????????? ?????????????????????????
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1947?? ?????????? ?????????????????????????????? ?????????? ?????????? 12(4)????????? ??????????
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46. The conciliation proceedings were compelled to end in failure

due to the boycott by the management, which refused to participate in further talks on the basis of certain objections it had raised. Acting upon the failure report, the

Government, after a lapse of three years, referred the 42 of 54 dispute for adjudication by issuing G.O.(D) No. 565, Labour and Employment Department, dated 21.10.2010. The dispute was subsequently taken on file by the Industrial Tribunal as I.D. No. 33 of 2010.

47. The management appears to have overlooked the fact that it had

voluntarily boycotted the conciliation proceedings. Significantly, a State amendment introduced by the Tamil Nadu Legislature through Act 5 of 1988 conferred civil court powers upon Conciliation Officers. As per Section 11(4)(i) of the Industrial Disputes Act, they are empowered to enforce the attendance of any person before them. It is, therefore, evident that from the issuance of the notice dated 28.09.2007 (Ex.P1 / Ex.R11) until the date of the failure report on 10.12.2007, the conciliation proceedings were actively pending. Furthermore, by virtue of the extended operation contemplated under Section 20(2) of the Industrial Disputes Act, conciliation proceedings are deemed to have concluded in the following manner:-

A conciliation proceeding shall be deemed to have concluded- (a)where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute; (b)where no settlement is arrived at, when the report of the 43 of 54 conciliation officer is received by the appropriate Government or when the report of the Board is published under section 17, as the case may be; or (c)when a reference is made to a Court, [Labour Court, Tribunal or National Tribunal] under section 10 during the pendency of conciliation proceedings.

48. The management appeared keen to bring the conciliation

proceedings to an end, with the objective of dismissing the workmen without seeking the mandatory approval of the Conciliation Officer under Section 33 of the Industrial Disputes Act. In fact, as stated in paragraph 8 of the additional counter statement filed before the Labour Court, only in the cases of C.P. No. 45 of 2010 (K. Annamurthy), C.P. No. 48 of 2010 (G. Venkatrajulu), C.P. No. 57 of 2010 (S. Selvaraj), and C.P. No. 34 of 2012 (S. Selvaraj), domestic enquiries were allegedly conducted on 27.09.2007. In respect of the remaining workmen, they were

summarily dismissed even while conciliation proceedings were pending. One such instance is evident from the dismissal order issued to M. Saravanakumar (Respondent No. 17 in C.P. No. 55 of 2010), dated 23.10.2007, which clearly reveals that the respondent was asked to report for duty on 23.10.2007, and upon his failure to do so, he was retrospectively dismissed from service with effect from 20.10.2007. 44 of 54

49. The management consciously took a calculated risk by dispensing

with domestic enquiries and by failing to adhere to the procedure for imposing penalties as stipulated under the certified standing orders of the company (marked as Ex.R1). This course of action appears to have been adopted with the expectation that such dismissals would deter other workers, and based on the belief that, at most, a violation of Section 33 of the Industrial Disputes Act would entitle the workmen only to lodge a complaint or raise an industrial dispute. It seems the management also relied on the proposition laid down in *Workmen of Firestone Tyre & Rubber Co. v. Management*, (1973) 1 SCC 813, that in the event of a dispute, it could lead evidence to substantiate the charges at a later stage. However, having taken this risk, the management must now bear the consequences of its non-compliance with the mandatory requirements under Section 33 of the Industrial Disputes Act, including facing claims from the workmen for back wages. It is a fact that all the dismissals of the respondent workmen occurred during the pendency of conciliation proceedings and without obtaining express permission from the Conciliation Officer, who was conciliating the primary dispute between the parties.

50. Confronted with the charter of demands and the reported Stay in

Strike by the workmen, the Conciliation Officer made earnest efforts to 45 of 54 mediate between the parties. He had issued appropriate statutory notices for holding conciliation talks. Whether it is arose out of a strike notice through fiction and whether the notice was proper is immaterial in the present case. On the contrary, to save the management, the conciliation officer had issued notices to the parties and was holding talks. Whether the conciliation stemmed from a formal strike notice or arose by legal fiction-and whether the notice was technically

proper-are immaterial for the purpose of the present case. What is material is that the Conciliation Officer undertook his statutory duty to bring about a resolution. However, it was the management that escalated the situation by withdrawing from the conciliation process and proceeding to dismiss the workmen in contravention of the Act and the Certified Standing Orders. For this deviation from legal procedure, the management must necessarily bear the consequences.

51. The term conciliation proceeding is defined under Section 2(e) of the Industrial Disputes Act, which reads as follows:- Conciliation proceeding means any proceedings held by a Conciliation Officer or Board under this Act

52. The provision for the appointment of a Conciliation Officer is contained in Section 4(1) of the Industrial Disputes Act, which reads as 46 of 54 follows:-

The appropriate Government may, by notification in the Official Gazette appoint such number of persons as it thinks fit, to be Conciliation Officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

53. Section 12 of the Industrial Disputes Act outlines the duties of the Conciliation Officer, and is extracted as follows:-

(1)Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under section 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2)The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3)If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government [or an

officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer 47 of 54 shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a

settlement thereof, together with a full statement of such facts

and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at.

(5) If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government: Provided that, subject to the approval of the conciliation officer, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

54. When the Industrial Disputes Act lays emphasis on the role of the

Conciliation Officer in facilitating a fair settlement between the parties- and keeping in view the possibility that workmen may be victimised during the course of such proceedings-Section 33 was introduced to mandate that the management must obtain express permission or approval before taking 48 of 54 any punitive action against workmen. The provision also entrusts the same Conciliation Officer

with supervisory authority to maintain status quo until the proceedings conclude. In this context, the petitioner-management cannot be permitted to circumvent the statutory mandate by raising hyper- technical objections, which have consistently been rejected by the courts over time.

55. Anticipating a possible challenge to the authority of the Jaipur

Zila judgment (supra) on the ground that it was rendered by a coordinate bench and therefore could not have disagreed with earlier decisions, and that the Court ought to follow the prior rulings, Mr. N.G.R. Prasad, learned

counsel for the workmen, placed reliance on the Division Bench judgment

in Management of GEM Granites v. Presiding Officer, reported in 2024 SCC OnLine Mad 5377. In that case, a similar argument was expressly rejected by the Bench. Paragraphs 10, 11, and 12 of the said judgment may be usefully extracted below:-

10. This leads us to the second limb of his arguments as to the binding nature of the decisions of a Smaller Bench of the Hon'ble Supreme Court, vis-a-vis the Larger Bench, on the High Courts of the Country. It is the submission of the learned senior counsel for the Management that even though the subsequent decisions are rendered by a Smaller Bench, where explanations and interpretations are rendered, the High Court is bound to

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follow the subsequent decisions by the Smaller Bench of the Hon'ble Supreme Court and cannot give a different interpretation than the one made in the subsequent decision. Apparently, the learned senior counsel is referring to the mandate under Article 141 of the Constitution of India, which enshrines that the law declared by the Hon'ble Supreme Court is

binding on all Courts within the territory of India.. The learned senior counsel appearing for the workmen had relied upon the decision in Sundeep Kumar Bafna's case (supra), which answers the ground raised by the Management, wherein it was held inter alia that when decisions of the Larger Benches and contrary views of the Smaller Benches of the Hon'ble Supreme Court are cited before the High Courts, the only option available to the High Courts is to apply the earliest view. The relevant portion of the judgment reads as follows: 19. It cannot be overemphasized that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the view as the succeeding ones would fall in the category of per incuriam.

12. The aforesaid extract squarely covers the predicament when 50 of 54

decisions of the Larger Bench of the Hon'ble Supreme Court, as well as the Smaller Benches with interpretations and further explanations on the ratio decidendi are produced before the High Courts, or when two different views on a ratio decidendi by the Hon'ble Supreme Court are relied upon. In line with the decision in Sundeep Kumar Bafna's case (supra), the High Court would be obligated to follow the earliest view of the Hon'ble Supreme Court.

56. Lastly, it cannot be said that the impugned order is a case of no

evidence. On the contrary, relevant documentary evidence-marked with the consent of both parties-was very much on record, and the Labour Court has appropriately appreciated the same while granting relief to the workmen. Further, under Section 11(3)(d) of the Industrial Disputes Act, the powers of the Labour Court may be supplemented as prescribed by the appropriate Government. In this regard, Rule 39 of the Tamil Nadu Industrial Disputes Rules, 1958, is relevant and reads as follows:-

A Conciliation Officer, Board, Court, Labour Court or Tribunal, or an Arbitrator may call for, admit or accept any evidence at any stage and in any manner, which in equity and good conscience he thinks fit.

57. Relying on the same evidentiary framework under the Industrial

Disputes Act, Justice M. Srinivasan (as he then was), in S. Ramaiah 51 of 54 Mudaliar Bros v. The Presiding Officer, Industrial Tribunal, Madras, reported in 1992 (1) LLJ 9, upheld the validity of an award even though the workmen had filed affidavits that were not subjected to cross-examination by the management.

58. In view of the foregoing discussion, W.P. No. 2948 of 2020 stands

dismissed. Consequently, W.M.P. Nos. 3428 of 2020 and 4778 of 2023 are also dismissed. However, as Respondent No. 40 is reported to be deceased and the petitioner has not taken steps to bring his legal representatives on record, it is hereby directed that the amount awarded under the impugned

order in C.P. No. 43 of 2012 (relating to Late G. Ashokan, son of

Govindaraju) shall be disbursed to his legal heirs, without driving them to initiate separate proceedings. There shall be a cost of Rs.20,000/- payable by the petitioner-management to the learned counsel appearing for the respondents.

02.04.2025 ay Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No 52 of 54 To The Presiding Officer, Additional Labour Court, Coimbatore. DR. A.D. MARIA CLETE, J ay Pre-Delivery Judgment made in W.P.No. 2948 of 2020 and WMP No.3428 of 2020 and 4778 of 2023 53 of 54

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