

Kunjan Manu and ors. Vs. Aspinwalla and Co. Ltd. and ors.

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Court : Kerala

Decided On : Mar-13-1962

Reported in : AIR1963Ker264; (1963)ILLJ212Ker

Judge : C.A. Vaidialingam, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 33, 33(1), (2) and 33A

Appeal No. : O.P. No. 1384 of 1960

Appellant : Kunjan Manu and ors.

Respondent : Aspinwalla and Co. Ltd. and ors.

Advocate for Def. : P.K. Kurien,; G. Balagangadharan Nair and; K. Sukumaran

Advocate for Pet/Ap. : K. Velayudhan Nair,; M.V. Joseph,; V.S. Moothathu an

Disposition : Petition dismissed

Judgement :

ORDER

C.A. Vaidialingam, J.

1. In this writ petition, Mr. K. Velayudhan Nair, learned counsel for the petitioner, challenges the common award made by the Industrial Tribunal, Ernakulam, in I. D. Nos. 50, 53 and 58 of 1959.

2. The management appears to have terminated the services of certain workers; and, in view of the fact that an industrial dispute was already pending as I. D. No. 20/1958, it was the grievance of the workers concerned, that action has been taken by the management, contrary to the provisions of Section 33 of the Industrial Disputes Act. Accordingly, under Section 33A of the Act, 23 workers made a complaint before the Industrial Tribunal, which was registered as Industrial Disputes Nos. 50, 53 and 58 of 1959.

3. The main grievance of the workers concerned, as I mentioned earlier, was that their discharge was contrary to the provisions of Section 33 of the Industrial Disputes Act.

4. There is no controversy, and it is also mentioned in the affidavit filed in support of the writ petition, that in I. D. 20/1958, which was pending at about the relevant time, the issues referred were:

(a) Whether there was any change in the conditions of service of the workmen employed in the press section of the company; and

(b) Whether they are entitled to get the strike wages?

5. The services of the workmen concerned appear to have been terminated between the period 23-6-59 and 15-7-1959. Industrial Dispute No. 20/58 itself was referred for adjudication on 17-3-1958, and the award therein was sent to the State Government on 16-12-59.

6. The management took up the position that there has been no violation of the provisions of Section 33 of the Act, on two grounds, namely, that the workmen concerned cannot be considered to be workmen who are concerned in the industrial dispute which was pending and, secondly, that the action by way of termination of services of the workmen concerned was taken by the management on the basis of a decision by the Coir Industrial Relations Council.

7. The Industrial Tribunal, has ultimately come to the conclusion, that so far as the first contention of the management is concerned, it cannot be accepted. According to the Tribunal, the workmen who had filed the complaint under Section 33A of the

Act, are workmen who are concerned in the main dispute, viz., I. D. 20/58 and that, therefore, they are entitled to make the complaint under Section 33, if they are otherwise able to satisfy that there has been a violation of the provisions of Section 33 of the Act.

8. But, so far as the actual termination of the services of the workmen is concerned, the Tribunal took the view that the termination of the services of those workmen will not be attracted by Section 33(1)(a) of the Act. I will be referring to the relevant provisions a little later.

9. So far as this aspect is concerned, the Tribunal takes the view that the termination of the services of the workmen simpliciter cannot certainly be considered to be an alteration of the conditions of service of the workmen concerned, either under Section 33(1)(a) or 33(2)(a). An attempt also appears to have been made by the workmen concerned, based upon the provisions of Section 33(2)(b), that this being a case of discharge, action can be taken by the management only with the approval of the Tribunal concerned, as provided by the proviso to Section 33(2)(b) of the Act.

10. Here again, the Tribunal was not prepared to accept the case of the workmen, because it is of the view that the discharge contemplated under Section 33(a)(b) must be a discharge for misconduct. The Tribunal proceeds on the plea set up by the workmen themselves, and has come to the conclusion that the termination of the services or discharge of the workmen in this case, was not due to any misconduct, in which case alone the provisions of Section 33(2)(b) will stand attracted. Therefore, the Tribunal is of the view that the complaint made by the workmen concerned, under Section 33A of the Act, is unsustainable and untenable, and therefore dismissed the petitions filed by the various workmen.

11. In this Court, one other workman, who was also discharged and, as such, interested in the result of this writ petition, represented by Mr. M. M. Cherian, learned counsel, has filed an application, C. M. P. No. 8725/61, for getting himself impleaded in these proceedings. In view of the various matters mentioned therein, it is clear that the petitioner in the said C.M.P. should be considered to be one who is certainly interested in the result of this original petition. I, therefore, allowed the

petitioner in C. M. P. 8725/61 to intervene in these proceedings. Mr. M. M. Cherian, his learned counsel, has also supported and supplemented the contentions that have been raised on behalf of the workmen concerned, by Mr. K. Velayudhan Nair, learned counsel for the petitioners in this writ petition.

12. As I mentioned earlier, though the management contended that these workmen cannot be considered to be workmen concerned with the dispute in I. D. 20/58 and, therefore, Section 33 of the Industrial Disputes Act will not apply, that contention was not accepted by the Tribunal. That view of the Tribunal is quite correct, in view of the decision of the Supreme Court, reported in *New India Motors (P.) Ltd. New Delhi v. K. T. Morris*, (1960) 1 Lab LJ 551 : (AIR 1960 SC 875).

13. Section 33 of the Industrial Disputes Act, omitting Sub-sections (4) and (5) therein, is as follows:

'33. (1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before Labour Court or Tribunal or National Tribunal in respect of an Industrial dispute, no employer shall,--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute.

Save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute,--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of

such proceeding; or.

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed; unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in Sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute-

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.-- For the purposes of this sub-section, a 'Protected workman' in relation to an establishment, means a workman, who, by being an officer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.'

14. As I mentioned earlier, the Industrial Tribunal has not accepted the contention of the workers that the provisions of Section 33(1)(a) or 33(2) of the Act stand attracted to this case. That is; according to the Tribunal, it cannot be said that the action taken by the management by way of termination of services of the petitioners, will amount to altering the conditions of service of those persons.

15. I have already indicated that the Tribunal was also not prepared to accept the contention that Clause (b) of either Section 33(1) or 33(2) will apply, because the termination has not been for any misconduct. Though considerable reliance had

been placed before the Industrial Tribunal by the petitioners on Section 33(1)(a) of the Act, Mr. K. Velayudhan Nair, learned counsel for the petitioners in this Court, has urged that the provision that is really applicable will be either Section 33(2)(a) or 33(2)(b) of the Act.

16. Before I consider the question as to whether Section 33(2)(a) will apply, I will deal with the contention raised by the learned counsel for the petitioners, that an order of termination, that is, a discharge of the workmen concerned even simpliciter, though not for any misconduct, will attract the provisions of Section 33(2)(b) of the Act.

17. So far as that is concerned, Mr. Velayudhan Nair, learned counsel for the petitioner, has relied upon the judgment of the Bombay High Court, reported in *National Machinery . v. Vyas* (1961) 2 Lab LJ 274 (Bom), I had already extracted the relevant parts of Section 33 of the Industrial Disputes Act.

18. Omitting the unnecessary part of Section 33(2)(b), the position will be, and there is no controversy about, that, that during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, for any misconduct, not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman. According to Mr. K. Velayudhan Nair, learned counsel for the petitioners, notwithstanding the fact that Clause (b) of Sub-section (2) of Section 33 clearly adverts to an action being taken for misconduct by way of discharge or punishment, nevertheless, even a simple order of discharge, though it may not really be for any misconduct, will also come under the provisions of Clause (b) of Sub-section (2) of Section 33. In consequence, the learned counsel urged that the proviso to Clause (b) of Sub-section (2) of Section 33 will also, in turn, stand attracted in this case, inasmuch as the management has not taken the approval of the authority concerned, before taking action by way of discharge, the provisions of Section 33(2) at any rate, should be considered to have not been complied with, and that, therefore, the complaint made by the petitioners under Section 33A of the Act is perfectly justified and warranted by the circumstances of this case.

19. Going by the clear words found in neither Clause (b) of Sub-section (1) of Section 33, or in Clause (b) of Sub-section (2) of Section 33, in my opinion, it is not possible to accept the contention of the learned counsel for the petitioners, that the discharge, though not for any misconduct, as required by these sub-sections, will also come either, under Clause (b) of Section 33(1), or Clause (b) of Section 33(2).

20. Section 33(1) really prohibits the taking of action by the management, except in the circumstances, mentioned therein. Section 33(2), on the other hand, is, what I will call, an enabling provision. That is, it enables the management to take particular action in the circumstances mentioned therein. Though, prima facie, the decision of the Bombay High Court referred to above, of Mr. Justice Mody, in (1961) 2 Lab LJ 274 (Bom), may appear to support the contention of the learned counsel for the petitioners, that an order of discharge, though not for misconduct, may well come under Clause (b) of Section 33(2) and, in consequence, the provisions of the proviso will also come into play, a careful reading of the judgment, in my view, will not certainly lead to that conclusion.

21. In order to appreciate the scope of that decision, it is desirable to note briefly the circumstances, under which the matter came before the learned judge in that case. It will be seen that the management therein actually started disciplinary proceedings against the worker concerned, under the particular provision of the standing order, namely, 22 (d). After an inquiry was conducted, it appears that the management dropped further action, as they were satisfied that the evidence was not such as to find the employee guilty of misconduct under the particular standing order.

22. Then it will be seen that the management took action under another standing order, namely 21 (I) under which power was given to the management to terminate the employment of any employee. That order of discharge was challenged before the Industrial Tribunal, on the ground that there is a clear attempt by the management to circumvent Section 33(2) of the Act. It was under those circumstances that the matter came before the Industrial Tribunal.

23. The Industrial Tribunal was of the view that, though prima facie, it will look as if the order of discharge is a simple one and taken under the provisions of standing order 21 (I), in fact it was an action taken by the management to punish the employee, and so the action must be considered to have been taken really under standing order 22 (d). Therefore, it held that it amounts to discharge of the workman concerned as and by way of punishment for misconduct. The Tribunal was further of the view that, inasmuch as the approval of the Tribunal was not taken, though an industrial dispute was pending at the material time the management had violated the provisions of Section 33(2)(b) of the Act.

24. That award of the Industrial Tribunal was challenged before the learned Judge. No doubt, counsel for the management appears to have urged that the discharge contemplated under Clause (b) of Sub-section (2) of Section 33, should be one by way of punishment for a misconduct that is alleged as against the workman concerned. On the other hand, it appears to have been contended before the learned Judge, on behalf of the workman concerned, that in the particular circumstances of the case, the discharge must be held to be for misconduct as and by way of punishment. A further contention was also raised that even a discharge simpliciter, without the approval of the Tribunal, under the proviso to Clause (b) of Section 33(2) of the Act, will amount to violation of the provisions of the statute, and therefore, the complaint made under Section 33A was well founded.

25. The learned Judge, considers this aspect in some great detail. Though, ultimately, the learned Judge has come to the conclusion that a discharge simpliciter will also stand attracted by the provisions of the proviso to Section 33(2)(b), it will be seen that the reasoning of the learned Judge is that the discharge, at any rate, in order to attract the provisions of Section 33(2)(b), must be for a misconduct. That is made clear by the learned Judge in his observations at p. 280 of the report, in dealing with the contentions of the counsel for the management, that the proviso to Clause (b) of Section 33(2) will apply only when a discharge is as and by way of punishment for a misconduct. The learned Judge is not prepared to accept the contention that for every misconduct of the workman any action, which his employer can and would take against him, would be by way

of punishment only. In fact, the learned Judge, contemplates a case where there may be discharge simpliciter even for misconduct, as will be clear from the following observations:

'Why must the employer's action in relation to his workman be only that of punishment and none other? For every misconduct of the workman, the employer need not or may not punish the workman. He may take such other action as may be open to him, as for example by discharging him in exercise of his contractual right to terminate his services. Therefore, though under Clause (b) 'discharge' is to be for misconduct, 'discharge' can be otherwise than for punishment, and it is in that sense that that word has been specifically used in Clause (b). So construed, no word or phrase in Clause (b) is rendered redundant or superfluous and proper meaning given to the clause and all the words used therein.'

26. Therefore, the above observations clearly indicate what was in the mind of the learned Judge, namely, that there can be a discharge under Section 33(2)(b), even in the exercise of the contractual right of the management concerned, but the discharge certainly is to be for misconduct, as provided in Clause (b) of Section 33(2),

27. Therefore, the contention of Mr. K. Velayudhan Nair, learned counsel for the petitioners, supported also by Mr. M. M. Cherian, learned counsel for the intervenor, that the decision of the Bombay High Court goes to the extent of holding that even a discharge simpliciter will stand attracted by the proviso to Clause (b) of Section 33(2) of the Act, is not certainly warranted by the decision of the learned Judge.

28. On the other hand, Mr. P. K. Kurien, learned counsel for the management, has pointed out that from the observations of the learned Judge extracted above, it is very clear that even the learned Judge was not prepared to go to the extent of holding that the discharge, in order to attract the provisions of the proviso to Clause (b) of Section 33(2), need not be for any misconduct. As I do not understand the decision of the learned Judge to go to the extent to which Mr. K. Velayudhan Nair, contends for, the reliance placed upon the proviso to Clause (b) of Section 33(2) of the Act, cannot be accepted.

29. It cannot also be held that the discharge in the circumstances of the case; alters in any manner the conditions of service of the workmen concerned. No doubt, Mr. M. M. Cherian, learned counsel for the intervenor, strongly urged that the discharge under circumstances like these, will certainly amount to altering the conditions of service of the workmen concerned. In fact, the learned counsel was prepared to contend that even Section 33(1)(a) will apply to the particular case. According to the learned counsel, the discharge alters the conditions of service of the workman and it relates to a matter connected with I. D. 20758.

30. I am not inclined to accept this contention of the learned counsel. In my view, the Industrial Tribunal was perfectly justified in holding that even if the discharge of the workmen can be considered as in any manner altering the conditions of service of the workmen, Clause (a) of Section 33(1) does not at all apply as the conditions of service which have been altered, do not have any relation to the matter connected with the main industrial dispute itself.

31. It now remains to consider as to whether Mr. K. Velayudhan Nair's contention, that even if Clause (b) of Section 33(2) does not apply, whether Clause (a) of Section 33(2) will apply. It is here that the question arises whether the order of discharge, terminating the services of the workmen concerned, amounts to an alteration of the conditions of service applicable to the workmen.

32. According to both the learned counsel, Mr. K. Velayudhan Nair and Mr. M. M. Cherian, the workers have got the right to continue in service, and, therefore, if the conditions of service of the workmen are in any manner altered, by terminating their services at 55 years or on putting 30 years' of service, it must be considered that there has been an alteration of the conditions of their service. The learned counsel urged there is nothing in the standing orders of the company, which gives the management any right to discharge or terminate the services of the workmen concerned, on attaining the age of superannuation, as is purported to be done by the management.

33. The learned counsel urged that there is no provision in the standing orders of the company, which gives the management a right to terminate the service of the persons, like the petitioners, on attaining the age of 55, or on completing 30 years

of service.

34. In this connection, both the learned counsel placed Considerable reliance upon the actual notice issued by the management, a copy of which has been produced before me. It forms part of Ext. III series. Both the learned counsel urged that the notices have been issued by the management, not on the basis of any of the provisions of the standing orders, as such, but really because of a decision arrived at by the Coir Industrial Relations Council, at its meeting held on 10-6-60.

35. On the other hand, Mr. P. K. Kurian, learned counsel for the management, urged that the order of discharge, passed in this case, cannot certainly be considered in any manner to alter the conditions of service of the workmen concerned. In this connection, the learned counsel for the management further urged that the expressions 'conditions of service' or 'alteration in the conditions of service' clearly imply the continuance of employer-employee relationship. Once the service of a particular employee is terminated, there is no question of alteration of his conditions of service. As to whether the discharge is proper or not, does not at all arise now in these proceedings. The learned counsel urged that there is no question of any conditions of service of the employee being altered by the management. The learned counsel further urged that if the petitioners have got any grievance regarding the action as such taken by the management, they have got other remedies available to them; and it is open to them there to ventilate their grievances. In particular, the learned counsel for the management emphasised that none of the workmen who are actually in service have sought to challenge the order of the management, that these petitioners should retire on attaining the age of 55, or if they have completed 30 years of service.

36. Mr. P. K. Kurien, learned counsel for the management, also drew my attention to the provisions of Section 9A of the Act, wherein it is provided that the conditions of service applicable to any workman, at any rate in respect of the matters mentioned in the fourth schedule, shall not be affected by the employer except in the manner indicated therein. That, is, according to the learned counsel, the Legislature has used the expression 'conditions of service', and guidance, as to what exactly is meant by 'conditions of service', can be obtained by a perusal of the

various matters mentioned in the Fourth Schedule to the statute. Mr. P. K. Kurien naturally urged that on going through every one of the entries in the Fourth Schedule, it will be very clear that all of them will apply only so long as the relationship of employer and employee subsists.

37. In this connection, Mr. P. K. Kurien, learned counsel for the management, also urged that, even assuming that the discharge of the workmen, in the circumstances of this case, will amount to altering the conditions of service, nevertheless Section 33(2) gives power to the management to make an alteration of the conditions of service, provided it is in accordance with the standing orders of the company. The learned counsel placed reliance upon standing Order 17, in particular Sub-clause (a) of standing Order 17, wherein it is provided that the employment of any permanent workman may be terminated by 14 days' notice, or by payment of 14 days' wages in lieu of notice. Ext. T is a copy of the standing orders of the company. It is not necessary to refer to the various other matters mentioned therein. But the learned counsel urged that in this case, it can very well be considered that action has been taken by the management on the basis of the provision regarding the superannuation of persons, who have either completed 55 years of age, or 30 years of service, really based on the standing Order 17 (a) which governs the management.

38. So far as this is concerned, Mr. M. M. Cherian, learned counsel for the intervenor, strongly urged that a perusal of the circular or notice issued by the management will clearly show that at the time when they issued the notice, the provisions of the standing order relied upon were far from their mind, on the other hand, they purported to terminate the services of the workmen concerned, based on the report of the Coir Industrial Relations Council. The management has at no time claimed to exercise the power under the standing order. Even otherwise, the learned counsel urged, that unless the discharge or termination comes within the actual terms of the standing order No. 17 (a) the discharge cannot be considered as one based upon standing Order 17.

39. I will assume for the present that the discharge of the workmen concerned amounts to an alteration of the conditions of service of those workmen. Even on

that basis, in my view, it cannot be said, in the circumstances of this case, at any rate, that there has been a violation of the provisions of Section 33(2) of the statute either, so as to attract the proviso to Section 33(2)(b). The circular, if at all, or the recommendation of the Coir Industrial Relations Council, cannot certainly confer a power as such on the management to terminate the services of the workman. That resolution of the Coir Industrial Relations Council can at best be a recommendation to the managements, who are members of that association. The power to discharge or to terminate, must be found in the standing orders themselves. Acceptance of the contention of Mr. M. M. Cherian, that inasmuch as the termination has not been strictly and technically in accordance with the provisions of standing Order 17, namely, by payment of 14 days' wages or giving 14 days' notice, will mean that, if in a particular case the management is prepared to pay more than 14 days' wages or give more than 14 days' notice, it will not be a termination under standing Order 17. It is absolutely impossible for me to accept this contention of the learned counsel.

Standing Order 17 (a), in particular case, gives an unfettered right to the management to terminate the service by 14 days' notice, or by payment of 14 days' wages. That only means that the termination cannot be effected without less than 14 days' notice or payment of 14 days' wages. That standing order gives the management power to terminate the services of any workman but it also prescribes the minimum conditions that have to be complied with by the management. Therefore, if the management are prepared to give either more than 14 days' notice, or pay a larger amount than 14 days' wages, contemplated under standing Order 17 (a), it will nevertheless, in my view, be a termination under standing Order 17 (a). Whether the termination itself is proper or not, as I mentioned earlier, does not have any bearing regarding the powers of the management exercised in this case.

40. Then the only question is whether the management has violated the provisions of Section 33(2)(a) of the Act, and by discharging the workmen concerned they have violated their conditions of service. This question does not really arise, because I have held earlier that the action taken can be justified even under standing Order 17 (a). But to complete the discussion, I will express my view on

that aspect also.

41. I am not inclined to accept the contention of either Mr. K. Velayudhan Nair, learned counsel for the petitioners, or of Mr. M. M. Cherian, learned Counsel for the intervenor, that the discharge of the workmen in the circumstances of this case can be considered to be an alteration of the conditions of service of those workmen. I am in entire agreement with the reasoning of the Industrial Tribunal that the expression 'conditions of service' really imply the actual continuance of the relationship of employer and employee. If there has been a wrongful termination or discharge of particular workmen, the remedy is elsewhere. In this connection, as pointed out by Mr. P. K. Kurien, learned counsel for the management, guidance is also furnished by the Legislature itself in Section 9A of the Act, read with the Fourth Schedule thereof. No doubt, Mr. M. M. Cherian, learned counsel for the intervenor, urged that even in the Fourth Schedule, particularly entry Nos. 9 and II clearly show that the discharge in this case will amount to alteration of conditions of service of the workmen concerned. I am not inclined to accept this contention. Entry No. 9 relates, to the introduction of new rules of discipline or alteration of the existing rules, except in so far as they are provided in standing orders. The alteration in this case has nothing to do with disciplinary matters, at all.

42. Then, again, the learned counsel urged that it may come under entry No. II. Even that entry, when read closely, shows that it has nothing to do with the action taken by the management in this case by way of termination of the services of the workmen concerned. Though the decision of the Supreme Court, reported in *Banaras Ice Factory Ltd. v. Their Workmen* (1957) 1 Lab LJ 253 : (S) AIR 1957 SC 168) related to the closure of the industry, nevertheless, in my view, the particular observation which will be extracted immediately, will support the view that there can be no alteration of the conditions of service if the service itself comes to an end. In fact, the Supreme Court was considering the effect of Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 in particular, Clause (a) of Section 22, relating to the alteration, to the prejudice of the workmen, of the conditions of service applicable to them. The learned Judges observe at p. 256 (of Lab LJ) : (at p. 172 of AIR) as follows :

'Turning now to Section 22 of the Act, it is clear enough that Clause (a) applies to a running or existing industry only; when the industry itself ceases to exist, it is otiose to talk of alteration of the conditions of service of the workmen to their prejudice, because their service itself has come to an end'.

43. No doubt, as I mentioned earlier, the learned Judges had to consider a case of termination of the services of the workmen, when there was a complete closure of the industry. But the learned Judges had emphasised that it is otiose to talk of alteration of the conditions of service of the workmen to their prejudice when their service itself has come to an end. In my view, that part of the observation will also indicate that when there is a complete cessation of relationship of employer and employee, there cannot be any alteration of the conditions of service of the workmen to their prejudice. Therefore, I am not inclined to accept the contention of the learned counsel for the petitioners that the discharge of the workmen in this case is attracted either by the provisions of Section 33(2)(a) or Section 33(2)(b) of the Act. It follows that the view of the Industrial Tribunal that the complaint filed under Section 33A of the Industrial Disputes Act, is not maintainable, is perfectly justified, and does not call for any interference by this court.

44. I may also state that the view of Mr. Justice Mody in (1961) 2 Lab LJ 274 (Bom) referred to earlier, is to the effect that an order of discharge cannot be considered to amount to altering the conditions of service. On this basis, the learned Judge holds that Section 33(1)(a) or Section 33(2)(a) does not come into the picture, (See page 278 of the reports).

45. The writ petition, therefore, fails, and is dismissed. There will be no order as to costs.