IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF APRIL, 2022

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO.43940 OF 2011 (L-RES)

BETWEEN:

THE MANAGEMENT OF
BHARAT FRITZ WERNER LTD.,
MACHINE TOOL MANUFACTURERS,
PEENYA, YESHWANTHPURA POST,
BANGALORE - 560 022.
REPRESENTED BY ITS
DIRECTOR
SHRI N.N.UPADHYAY ... PETITIONER

(BY SRI KASTURI, SENIOR ADVOCATE FOR
SMT.K.SUBHA ANANTHI, ADVOCATE
FOR KASTURI ASSOCIATES)

AND:

BHARAT FRITZ WERNER KARMIKA SANGHA,
NO.25, BYRAPPA LAYOUT,
NAGASHETTYHALLI,
BANGALORE - 560 094.
REPRESENTED BY ITS PRESIDENT. ... RESPONDENT

(BY SRI SUBBA RAO, SENIOR ADVOCATE FOR
SRI K.S.SUBRAHMANYA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, SEEKING CERTAIN RELIEFS.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Sri.Kasturi, learned Senior counsel on behalf of Smt.K.Subha Ananthi for petitioner and Sri.Subba Rao, learned Senior counsel on behalf of Sri.K.S.Subrahmanya for respondent have appeared through video conferencing.

2. The parties are referred to as per their ranking before the Labour Court.

3. The material facts of this writ petition can be stated quite shortly as under:

It is stated that the second party- Management is engaged in the Manufacture of machine tools having its factory and registered office at Tumkur Road, Bangalore. The second party-Management employed 600 employees in the course of running its business. Out of these, 31 Workmen represent the first party - Union namely, Bharat Fritz Werner Karmika Sangha. The second party-

Management entered into a settlement with the first party Union on 27.04.1995 for 3 years and 8 months and Workmen have received substantial benefits under the settlement. One of the clauses of the settlement was that the Workmen should not stage any strike during the subsistence of the settlement and the Management should not declare a lockout. However, by violating the terms of the settlement, the first party - Union staged 11 days strike in the year 1996 and 85-days strike in 1997. The Union staged a strike from 03.03.1997 to 22.05.1997, till the strike was prohibited by the Government of Karnataka.

It is stated that during the month of March 1995, four Workmen indulged in serious acts of misconduct and the misconduct committed by the Workmen were serious in nature. The Management issued Charge Sheet–Cum-Notice of Inquiries to four Workmen and conducted Domestic Inquiry into charges levelled against them.

It is also stated that on the date of signing the settlement before the Deputy Labour Commissioner on

27.04.1995, the Management signed a Memorandum of Understanding with the Union that the suspension in respect of S.C.Venkataraju, Joseph D'souza will be revoked and Sri.Huchaiah's suspension will be continued and the Workmen will participate in the inquiry. The Inquiry Officer submitted his findings and report of the Inquiry Officer was furnished to four Workmen. In the meanwhile, the first party-Union demanded that the suspension of Sri.Huchaiah should be revoked and the disciplinary proceedings in respect of four Workmen should be dropped. The Management did not concede to this unreasonable demand.

After conducting Domestic Inquiry, the Management dismissed the four Workmen on 28.04.1997. The application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (for short 'the I.D. Act') was filed which was numbered as Serial Numbers 6 to 9 of 1997. Subsequently, the Government of Karnataka on 22.05.1997 referred the issue of dismissal of Workmen

Sri.Huchaiah, Joseph D'Souza, Sri.Venkataraju and Sri.T.C.Kumaraswamy to the Principal Labour Court, Bangalore, at the instance of the Workmen in Reference No.40/1997 which came to be adjudicated.

In view of this, the Management filed an application before the Industrial Tribunal and brought to the notice of the Tribunal about the above reference. The Industrial Tribunal placing reliance on the decision in ***ITC VS. GOVERNMENT OF KARNATAKA*** reported in ***1995 (2) LLJ 430*** disposed of the serial applications as having become infructuous.

The Union filed a claim statement before the Labour Court. The Management filed objections. The Management examined one Sri.B.A.Satyanarayana, Inquiry Officer. The Labour Court vide order dated:04.01.2005 held that the Domestic Inquiry as fair and proper and legal. Later on, the Management examined one Mr.S.Govindan and one Mr.Guruprasad.

As things stood thus, in the year 2009, the Union filed an application for amendment of the claim statement taking a plea that the disposal of 33 (2) (b) applications are bad in law and the Workmen continued to be the employees as per the judgment of the Hon'ble Apex Court in Jaipur Zilla's case pronounced in the year 2002. The application was objected by the Management. The amendment application came to be allowed by the Labour Court and the claim statement was amended accordingly. The Management filed additional counter to the claim statement for the contentions taken by the Union and addressed arguments on the same. A detailed written argument was also filed bringing it to the notice of the Court with regard to non-applicability of ***JAIPUR ZILLA's*** case to the dispute.

It is averred that, Workman Mr.Joseph D'Souza on 24.11.1997 entered into a settlement under Section 2(p) of the I.D. Act settling the matter with the Management by accepting compensation. Thus, the case was restricted to

only three Workmen namely, Huchaiah, Kumaraswamy and Venkataraju.

The Labour Court passed an award on 05.08.2011 and ordered reinstatement to Huchaiah, Kumaraswamy and Venkataraju into services from the date of dismissal with full back wages, continuity of service and other consequential benefits. The Labour Court also awarded 40% of the strike wages to the Workmen who staged illegal strike from 03.03.1997 to 23.05.1997. The Labour Court also observed that if any of these 3 Workmen have already attained age of superannuation, then they shall be deemed to have been continued in service till the date of attaining age of superannuation. It is stated that Workman - Huchaiah retired on 06.12.2007.

The order/award of the Labour Court is challenged on various grounds as set out in the writ petition.

CONTENTIONS OF LEARNED SENIOR COUNSEL SRI.KASTURI,

REGARDING SECTION 10 OF ID ACT

4. It is submitted that on certain acts of misconduct, the Management after holding a detailed Domestic Inquiry passed order of punishment and thereby, dismissed the employees. The Workmen raised a dispute and the Government on 22.05.1997 referred the dispute for adjudication under Section 10(1)(C) of the Industrial Disputes Act 1947 (for short 'the I.D. Act). Accordingly, a claim statement was filed before the Labour Court, Bangalore in Reference No.40/1997. The Management filed its objections. The Labour Court held the Domestic Inquiry as fair and proper. The dispute was adjudicated on merits and the Court passed the award.

It is submitted that the applications filed under Section 33 (2) (b) were disposed of only after the Workmen raised a dispute under Section 10 (1) (C) of the

I.D. Act. The applications were disposed of in accordance with law and they are not rejected.

Learned Counsel Sri.Kasturi, vehemently contended that during the pendency of 33 (2) (b) applications, a dispute was raised which is admittedly a larger and comprehensive proceeding and the adjudication process under Section 10 includes the proportionality of punishment also. Hence, it is submitted that any order on Serial Applications has no effect.

REGARDING TO SECTION 33 (2) (b)

It is submitted that the Management dismissed the Workmen on 28.04.1997. The applications under Section 33 (2) (b) were filed on 28.04.1997 in I.D.No.14/1990 (Old No.AID No.05/1978). The numbers of Serial applications are 6 to 9 of 1997. In the meanwhile, the Government made a reference of dispute on 22.05.1997. The Management filed a memo in all the serial applications stating that in view of dispute raised by the workmen and

the reference thereof under Section 10(1) (C) of the I.D. Act, the applications filed by the applicant (Management) has become infructuous. Therefore, the application does not survive for consideration and kindly be disposed of as not pressed. The Management also referred to the decision reported in 1985 (2) LLJ 430. The Workmen did not oppose the same. The Tribunal passed the order on 05.11.1997 stating that the serial applications does not survive for consideration in view of the dispute raised by the Workmen in I.D.No.40/97 before the Labour Court, Bangalore. He submitted that the Workmen filed claim statement on their own. Therefore, he sought to contend that the Workmen acquiesced in disposal of the applications under Section 33 (2) (b) and adjudication of the disputes and all along participated in the Reference without any demur.

REGARDING JAIPUR ZILLA'S CASE

Learned Senior counsel vehemently contended that the Labour Court having observed that the judgment in

JAIPUR ZILLA's case is prospective, could not have applied the same to the Serial application Nos. 6 to 9 of 1997. The observation that the Management by filing a memo, almost withdrew the said applications is totally incorrect as the Court passed order on the memos holding that the applications have become infructuous. The *JAIPUR ZILLA*'s case is not applicable to the facts and circumstances of the present case. It is also submitted that in *JAIPUR ZILLA's* case, there was no dispute raised during the pendency of 33(2)(b) application under the I.D Act.

REGARDING STRIKE AND GRANT OF WAGES:

Sri.Kasturi, learned Senior Counsel submits that the Labour Court has failed to appreciate the fact that the strike was indulged by the employees during the pendency of I.D.No.14/1990. The strike was opposed to clause 15.7 of the settlement dated:27.04.1995 wherein the Union had agreed that during the period of settlement, no strike will be resorted to.

Next, he submitted that the strike was prohibited by the Government on 22.05.1997. The strike indulged by the Workmen was illegal and opposed to Section 23 (c) of the I.D. Act. Hence, the Labour Court could not have granted wages for the strike period. The employees will not be entitled to strike period wages even if the strike is justified. Hence, there is no justification for granting 40% of the strike period wages to the Workmen.

A further submission is made that the Labour Court having observed that the strike is illegal as the Government prohibited the same, could not have awarded 40% of the strike period wages to the Workmen on the ground of striking balance.

Lastly, he submitted viewed from any angle, the award of the Labour Court is unsustainable in law. Therefore, he submitted that appropriate writ may be issued to set aside the award of the Labour Court.

To substantiate the case, learned Senior counsel Sri.Kasturi, has relied upon the following decisions:-

1. SYNDICATE BANK & ANR. Vs. K. UMESH NAYAK - 1994-II LLN 1296.
2. HMT LTD. Vs. HMT HEAD OFFICE EMPLOYEES' ASSOCIATION AND ORS. - 1997 (1) LLN 28.
3. PANYAM CEMENTS & MINERALS INDUSTRIES LTD. WIRE DIVISION, BANGALORE Vs. DECCAN WIRE EMPLOYEES' ASSOCIATION, BANGALORE& ANR. - 1998 LLR 1128.
4. DEVENDRA SWAMY Vs. KSRTC - 2002 (1) LLJ 454.
5. HINDUSTAN MOTORS LTD. Vs. TAPAN KUMAR BHATTACHARYA & ANR. - 2002 (2) LLJ 1156.
6. DIVISIONAL CONTROLLER, KSRTC (NWKRTC) Vs. A.T.MANE - 2005 (3) SCC 254.
7. MAHINDRA & MAHINDRA LTD. Vs. N.B.NARAVADE ETC. - 2005 LLR 360.
8. NOVARTIS INDIA LTD. Vs. STATE OF WEST BENGAL& ORS. - 2009 LLR 113.
9. NEKRTC Vs. M.NAGANA GOWDA - 2007 (10) SCC 765.
10. MANAGEMENT OF TAFE LTD. Vs. SRI H.K.UMESH - WA NO.621-622/2012 C/W W.A.NO.1422/2012 (L-TER)

11. RAJASTHAN STATE ROAD TRANSPORT CORPORATION AND ANR. Vs. SATYA PRAKASH - 2013 (9) SCC 232.
12. H.D.SHARMA Vs. NORTHERN INDIA TEXTILE RESEARCH ASSOCIATION & ANR. - 2000 (3) SCC 567.
13. UNITED BANK OF INDIA Vs. SIDHARTHA CHAKRABORTY - 2007 III LLJ 782.
14. METROPOLITAN TRANSPORT CORPORATION Vs. V.VENKATESAN - 2009 (4) LLN 5.

5. Sri.Subba Rao, learned Senior counsel for respondents justified the award passed by the Labour Court.

Next, he submitted that the first party -Union is a registered Union and it is taking active role in persuading the second party- Management for better service conditions and also fighting against the Management to refrain from practicing various unfair Labour practice. The Management withdrew various benefits which have become part of the service conditions. There are several disputes pending as against the Management.

A further submission is made that alleging misconduct, the Management dismissed four Workmen from service on 28.04.1997. The Management had filed Serial applications under Section 33 (2) (b) of the I.D Act for approval of the order of dismissal. However, the Management filed a memo and sought for dismissal of the applications as not pressed. The Court having accepted the memo, passed an order and applications came to be dismissed as having become infructuous.

Sri.Subba Rao, vehemently contended that no approval has been granted by the Tribunal. The Constitution Bench of the Hon'ble Apex Court in ***JAIPUR ZILLA SAHAKARI BHOOMI VIKAS BANK LTD VS RAM GOPAL SHARAMA*** reported in ***2002 (1) LLJ 834*** has clearly stated that when an application is made under Section 33 (2) (b) and is not allowed and no approval is granted to the order of dismissal such an order of dismissal is void as the order of dismissal renders itself inoperative and ineffective and the Workmen would be

entitled to wages from the date of dismissal till the date of grant of approval. Having regard to the fact that no approval has been granted to the order of dismissal as required under Section 33 (2) (b) of the I.D.Act and the law laid down by the Apex Court in Jaipur Zilla's case, the order of dismissal is void and inoperative and the dismissal order is *void ab initio.*

It is further submitted that the Management should have taken back all the four Workmen to duty. The order of dismissal is no longer effective and cannot be taken cognizance of.

Learned Senior Counsel Sri.Subba Rao strenuously urged that the Workmen are innocent and the charges against the Workmen are devoid of merits. It is also submitted that having regard to the background of the nature of the charges and the pressure used by the Management to achieve their end, it is clear that the case on hand is a case of victimization.

Sri. Subba Rao, argued that after insertion of Section 11 A in the statute, the jurisdiction of the Labour Court has both qualitatively and quantitively expanded the jurisdiction. Therefore, it is quite clear that the Labour Court has to reappraise the evidence and come to an independent conclusion on the basis of the evidence on record. The Labour Court in extenso referred to the material on record and passed award.

Lastly, he submitted that the writ petition is devoid of merits and the same may be dismissed.

To substantiate the case, learned Senior counsel Sri.Subba Rao, placed reliance on the following decisions: -

1. JAIPUR ZILLA SAHKARI BHOOMI VIKAS BANK LTD. Vs. RAM GOPAL SHARMA AND OTHERS - 2002 (1) LLJ 834.
2. INDIAN TELEPHONE INDUSTRIES LTD Vs. PRABHAKAR H. MANJRE AND OTHERS - 2002 III LLJ 1134.
3. MD. TAMIL NADU STATE TRANSPORT CORPORATION Vs. NEETHIVILANGAN - 2002 I LLJ 1706.

4. RAMANUJAM C Vs. P.O. INDUSTRIAL TRIBUNAL - 2004 1 LLJ 294.
5. P.V.GEORGE AND OTHERS Vs. STATE OF KERALA - 2007 (3) SCC 557.
6. BAGALKOTE CEMENT COMPANY Vs. MANAGEMENT OF KANORIA INDUSTRIAL LTD. - 1LR 2006 KAR 2009.
7. L.G.DALAL Vs. WEST COAST PAPER MILLS LTD. - IN W.P.No.20388/1998
8. WEST COAST PAPER MILLS LTD. L.G.DALAL - IN W.A.NO.5701/2003.
9. M/S HINDUSTAN LEVER LTD. Vs. DOOD BADSHAH BANI - 2007 (KAR) LG 544.
10. THE MANAGEMENT OF HINDUSTAN LEVER LIMITED Vs. SRI DOOD BADSHAH BANI - ILR 2007 KAR 1591.
11. THE MANAGEMENT OF TRACTORS AND FARMS EQUIPMENTS LIMITED (TRACTOR DIVISION), DODDABALLAPUR Vs. H.K.RAMESH - 2015 (3) KAR.LJ 437.
12. REGIONAL AUTHORITY, DENA BANK AND ANOTHER Vs. GHANSHAYAM – 2001 II LLJ 274
13. BHARAT H. PARMAR Vs. AIRPORT AUTHORITY OF INDIA AND OTHERS – 2010 IV LLJ 153 (Guj)

6. Heard the contentions urged on behalf of parties and perused the writ papers and records with care.

7. The question which arises for consideration is whether the award of the Labour Court requires any interference by this Court?

8. The facts have been sufficiently stated:

The Management of Bharat Fritz Werner Ltd., instituted disciplinary proceedings against four Workmen on certain serious charges of misconduct. Domestic Inquiry was held against each of the Workmen. The Inquiry Officer found them guilty of the charges levelled against them. The Management accepted the findings and imposed penalty of dismissal on 28.04.1997. When the order of dismissal was made in the year 1997, an industrial dispute was pending before the Industrial Tribunal, Bangalore in I.D.No.14/1990. The Workmen were connected with the said dispute hence, the Management made applications under Section 33 (2) (b) of the I.D. Act seeking approval

to the order of dismissal. The applications were made to the Tribunal on 28.04.1997. They were numbered as Serial Application Numbers 6 to 9 of 1997.

As things stood thus, four Workmen raised a dispute. The Government of Karnataka in their order No. LD.178 LTD 97 dated 22.05.1997 referred the dispute concerning the dismissal of Workmen for industrial adjudication to the Labour Court, Bangalore.

In the meanwhile, the Management filed a memo in I.D.No.14/1990 and sought for dismissal of the Serial applications as not pressed. The Tribunal passed the order on 05.11.1997 stating that the serial applications does not survive for consideration in view of the dispute raised by the Workmen in Ref No.40/97 before the Labour Court, Bangalore.

It is significant to note that during the pendency the adjudication of the dispute, the first party- Union moved an application seeking amendment to the claim statement.

In the application, it is stated that no approval has been granted to the order of dismissal as required under Section 33 (2) (b) of the I.D.Act and the law laid down by the Apex Court in Jaipur Zilla's case, hence the order of dismissal is inoperative and the dismissal order is *void ab initio.* The Management filed its objections. The Management contended that the application filed belatedly. The Labour Court vide order dated 21.03.2009 allowed the application. Thereafter, the first party - Union filed amended claim statement and the Management also amended its objections. The Labour Court adjudicated the dispute and passed the award. The award is challenged in this petition on several grounds as set out in the writ petition.

While addressing argument, learned Senior counsel Sri.Subba Rao for the Workmen vehemently argued that notwithstanding the order of reference by the Government for adjudication of the dispute before the Labour Court, the

non–compliance of mandatory provision of Section 33 (2) (b) would render the order of dismissal as void.

On the other hand, learned Senior counsel Sri.Kasturi, for the Management strenuously urged that in view of reference of industrial dispute to the Labour Court which is admittedly a larger comprehensive proceeding and the adjudication process includes the proportionality of punishment also, the order on Serial applications has no effect.

I may with advantage refer to the Sections 10 and 33 (2) (b) of the Act before considering the contentions of the parties.

Section 10 reads as under:

> ***"S. 10.*** *Reference of Disputes to Boards, Courts or Tribunals.- (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,-*
>
> *(a) refer the dispute to a Board for promoting a settlement thereof; or*

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

[(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c);]

[Provided further that] where the dispute relates to a public utility service and a notice under Section 22 has been given, the

appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced.

[Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government:]

***[S.33**.Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-(1) During the pendency of any conciliation proceeding before conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-*

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

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

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

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],-

(a) alter, in regard to any matter not connected with the dispute, the

conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, 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.

A reading of the above two Sub-sections of Section 33 makes it clear that they are intended to be applied during the pendency of any proceeding either in the nature of conciliation proceeding or in the nature of proceeding by way of reference made under Section 10 of the I.D. Act. Section 33 (1) of the Act also protects Workmen concerned in the main dispute which is pending conciliation or adjudication. The effect of Sub-section (1) is that where

the conditions precedent prescribed by it are satisfied, the employer is prohibited from taking any action in regard to matters specified by clauses (a) and (b) against the Workmen concerned in such dispute without previous express permission in writing of the authority before which the proceeding is pending. In other words, in cases falling under Sub-section (1), before any action is be taken by the employer to which reference is made by clauses (a) and (b), he must obtain the express permission of the specified Authority.

Section 33 (2) of the I.D. Act proceeds to lay down a similar provision and the conditions prescribed by it are the same as those contained in Section 33 (1) of the I.D Act. This proviso provides if an action is intended to be taken by an employer against any of his employees which falls within the scope of clause (b), he can do so, subject to the requirements of the proviso. If the employee is intended to be discharged or dismissed, an order can be passed by the employer against him, provided he has paid such

employee the wages for one month, and he has made an application to the Authority before which the proceeding is pending for approval of the action taken by him.

It is settled by series of decisions of the Apex Court that the requirements of the proviso have to be satisfied by the employer on the basis that they form part of the same transaction. The employer must either pay or offer the salary of one month to the employee before passing an order of discharge or dismissal and must also apply to the specified Authority for approval of his action at the same time or within reasonable time. Thereafter, if the approval is granted, it takes effect from the date of the order passed by the employer and if the approval is not granted, the order of dismissal or discharge passed by the employer is wholly invalid or inoperative and the employee can legitimately claim to continue to be in the employment notwithstanding the order passed by the employer dismissing or discharging him.

In other words, approval by the prescribed Authority makes the order of discharge or dismissal effective , but in the absence of approval, such an order is invalid and inoperative in law. It is needless to say that Section 33 of the Act imposes a ban on the employer exercising his common law, statutory or contractual right to terminate the services of the employees according to the contract or the provisions of law governing such service. It is therefore, clear that the Legislature, devised a formula for reconciling the need of the employer to have liberty to act against his employees, and the necessity for keeping the atmosphere calm and peaceful pending adjudication of industrial dispute.

The law is well settled way back in the year 1966 in ***TATA IRON AND STEEL COMPANY LIMITED VS. S.N. MODAK*** *reported in* ***AIR 1966 SC 380,*** that in regard to actions covered by Section 33 (1) of the I.D. Act, the employer has to obtain previous permission, while in

regard to action falling under Section 33 (2) of the I.D. Act, he has to obtain subsequent approval.

In **THE *MANAGEMENT HOTEL IMPERIAL, NEW DELHI AND OTHERS V. HOTEL WORKERS' UNION*** *reported in* ***AIR 1959 S C 1342,*** the Apex Court has pointed out that Section 33 of the 1947 Act has brought about a fundamental change in the relationship of master and servant and the power of the master to dismiss or discharge the servant- the undisputed common law right of the master to discharge or dismiss his servant for proper cause has been subjected to a ban under Section 33. The master can after holding an enquiry temporarily terminate the relationship of master and servant by suspending the employee pending proceedings under Section 33. If the Tribunal grants the permission the suspended contract would end and there is no obligation to pay any wages after the date of suspension. If, on the other hand, the permission is refused such suspension would be wrong and

the workman would be entitled to all his wages from the date of suspension.

It is perhaps well to observe that an employer has a right to dismiss his servant for proper cause. This right of the employer is subjected to a ban under Section 33 (2) (b) of the Act. He has therefore, the right to suspend or terminate, temporarily the relationship of master and servant from the date of the order of dismissal subject to the result of the proceedings under Section 33 of the Act so that there will be no obligation on him to pay wages and no obligation on the servant to work.

Reverting back to the present case, on certain acts of misconduct, the Management after holding an inquiry passed an order of punishment and dismissed four Workmen on 28.04.1997. It also filed application under Section 33 (2) (b) of the Act on 28.04.1997 for approval of its action. When the proceedings under Section 33 (2) (b) of the Act were pending before the Tribunal, the Workmen raised a dispute and on the Conciliation Officer reporting

that there was no settlement of the disputes, the Government by its order No.LD.178 LTD 97 dated 22.05.1997 referred an industrial dispute concerning the Management and Workmen for adjudication under Section 10(1) of the I.D. Act to the Labour Court, Bangalore. The reference was registered by the Labour Court in Reference No.40/1997.

The Management moved a memo in a pending proceeding i.e., in I.D.No.14/1990 and sought for dismissal of the serial applications as not pressed. The Tribunal passed order on 05.11.1997 and thereby dismissed the applications filed under Section 33(2) (b) as not pressed. By filing a memo and taking the order on the applications as not pressed, the Management elected to contest the reference under Section 10 (1) of the I.D Act before the Labour Court. The Labour Court referred to the material on record and passed the award.

A good deal of argument was canvassed on Section 33 (2) (b) of the I.D. Act.

Sri.Subba Rao, learned Senior counsel, argued that the law as declared by the Supreme Court as on date, is that there can be no valid order of dismissal for discharging an employee from its service, if there was no approval as required under Section 33 (2) (b) of the I.D. Act.

It is also submitted that the Labour Court justified in applying the Jaipur Zilla's case to the facts and circumstances of the case.

In reply, Sri.Kasturi, learned counsel for the Management contended that the declaration of the law as laid down by the Hon'ble Supreme Court by the Constitution Bench was delivered only in the year 2002 and the order of dismissal in the present case having been made much earlier, the judgment of the Constitution Bench will apply only as prospectively.

I have considered the submissions on behalf of Workmen and the Management.

It is settled proposition of law that the law declared by the Hon'ble Supreme Court is always retrospective unless, it is specifically made applicable prospective. Further, it is also noticed that the Labour Court being the Industrial Adjudicator under the Act has elaborately considered the matter and rightly held that the Management did not obtain approval from the competent Authority as required under Section 33 (2) (b) of the I.D. Act. It is the Industrial Adjudicator who has the primary jurisdiction to give its findings on the dispute. The said finding does not require interference by this Court.

STRIKE: A good deal of argument was also addressed on behalf of the Management and the Workmen regarding payment of wages during the strike period.

Collective bargaining is legally recognized and sanctioned tool with the employees to negotiate better working environment for themselves. Strike is an extreme form of collective bargaining where employees collectively

refuse to undertake work unless their demands are conceded by the Management. Strike is regarded as one of the most potent and extreme weapons with the employees in their struggle against the employer for getting their grievance/s redressed.

It is an accepted principle of industrial adjudication that Workmen can resort to strike in order to press their demands without snapping the relationship of employer and employee. It is equally a well- accepted principle that the work of the factory cannot be paralyzed and brought to a standstill by an illegal strike, in spite of the legal steps being taken by the Management to resolve the conflict. In such circumstances, the employer has the right to take disciplinary action for the misconduct of strike against the delinquent Workman and also 'to carry on the work of the factory in furtherance of which it could employ other Workmen and justify its action in any industrial adjudication of the dispute arising therefrom.

Whether the strike is justified or unjustified will depend upon the fairness and reasonableness of the demands of workers. Thus, if the Workmen go on strike without contravening statutory requirements, in support of their demands, the strike will be justified.

A worker cannot always be dismissed for joining a strike which is not illegal, but is simply unjustified. In such cases, in the absence of any evidence to show that the workmen concerned were guilty of violence during the strike, the action of dismissal cannot be sustained. The question whether a strike is illegal or not is a question of law, but the further question is whether strike was justified or not is a question of fact. When, therefore, on consideration of all the facts and circumstances, the Tribunal concludes that the strike was justified, that finding cannot be interfered with, in judicial review, even if the Tribunal placed undue weight on one or more circumstances.

Suffice it to note that before the Tribunal, on the issue of entitlement of wages for the strike period, the Workmen had pleaded that the strike was justified while the Management contended that the strike was both illegal and unjustified. The Tribunal has recorded a finding and ordered that the Management to pay the workers 40% of what they have drawn in the month of February 1997 for the period from 03.03.1997 to 22.05.1997.

The events leading up to the strike by the Workmen was a protest against the unreasonable attitude and withdrawal of various benefits which were part of service conditions. Basically, it was a protest against the Management for implementation of charter of demands. The Management suspended four Workmen for the alleged misconduct. The main demand of the Union was about the withdrawal of suspension order and domestic enquiry. Hence, the protest was in connection with the request of the Union regarding revocation of the order of suspension

of one of the Workmen - Huchaiah and dropping of Domestic Inquiry proceedings.

The Labour Court held that there is no cogent evidence to substantiate that the striking Workmen had resorted to force or violence. It is also relevant to note that no evidence was adduced by the Management to show that the strike was not for the reason spoken to by the Union. Hence, the Industrial Adjudicator held that the Workmen are entitled for 40% of what they have drawn in the month of February 1997 for the period from 03.03.1997 to 22.05.1997. It will thus be apparent from this that on the facts, it was established that there was neither a violation of a provisions of any statute.

It is perhaps well to observe that all the issues were fell for decision of the Labour Court and the same were within the domain of the Industrial Adjudicator under the Act. It is the Industrial Adjudicator who had the primary jurisdiction to give its findings on all the issues taking the necessary evidence on the subject. This Court is satisfied

that the Labour Court in the present case has considered the material on record and recorded its findings on all issues by assuming jurisdiction which was properly vested in the Industrial adjudicator. Therefore, the finding of the Labour Court in this regard is also accepted.

Counsel for petitioner and respondent have cited a number of cases, but I do not think that the law is in doubt. Each decision turns on its own facts. The present case is also tested in the light of the aforesaid decisions.

9. In the result, the writ petition is devoid of merits. Accordingly, it is ***dismissed***.

Sd/-
JUDGE

VMB/TKN