PETITIONER:
PUNJAB BEVERAGES PVT. LTD., CHANDIGARH

Vs.

RESPONDENT:
SURESH CHAND AND ANR.

DATE OF JUDGMENT21/02/1978

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
BEG, M. HAMEEDULLAH (CJ)
DESAI, D.A.

CITATION:
1978 AIR 995 1978 SCR (3) 370
1978 SCC (2) 144
CITATOR INFO :
RF 1980 SC1650 (13)
RF 1981 SC 960 (11)
F 1982 SC1493 (6)
F 1985 SC1034 (15)

ACT:
Industrial Disputes Act, 1947-Section 33(c) (2)-Maintainability of an application under s.33 c (2)-Nature of Proceedings under Section 33(c)(2).
Industrial Disputes Act, (No. XIV of 1947), 1947 Section 33-Object of-Scope of the inquiry before the Tribunal exercising jurisdiction under Section 33.
Construction of a statute-Construction should be with reference to the context and other provisions of statute-Construction of S. 33 of the Industrial Disputes Act, 1947.
Industrial Disputes Act, 1947, Section 33A-Scope of the inquiry effect of S. 33 on the interpretation of S. 33.
Industrial Disputes Act, (No. XIV of 1947), 1947-Sections 31, 33(2) (b), 33A, 33C(2), Scope of-Effect of contravention of Section 33 (2)(b) on an order of dismissal passed by an employer in breach of it-Whether it renders the order of dismissal void and inoperative.

HEADNOTE:
Respondent No. 1 in (C.A. 1375 of 1977) was a workman employed as an operator in the Undertaking of the appellant from 1st March, 1970 and was in receipt of Rs. 100/- per month as salary, which would have been raised to Rs. 115/- per month from 1st October, 1972, if he had continued in service with the appellant. But on 21st December, 1971 the 1st Respondent was suspended by the appellant and a Charge-sheet was served upon him and before any inquiry on the basis of this Charge-sheet could be held another Charge-sheet was given to him on 17th April, 1973. This was followed by a regular inquiry and ultimately the appellant, finding the 1st Respondent guilty, dismissed him from service by an order dated 23rd December, 1974. Since, an Industrial Dispute was pending at the time when the 1st Respondent was dismissed from service in view of the provisions contained in S. 33(2)(b) of the Industrial Disputes Act, the appellant immediately approached

Industrial Tribunal at Chandigarh before which the Industrial dispute was pending for approval of the action taken by it. The appellant, however, withdrew that application and the Industrial Tribunal, thereupon, made an order on 4th September 1976 dismissing the application as withdrawn. The 1st Respondent then demanded from the appellant full wages from the date of his suspension till the date of demand, contending that as the action of the appellant dismissing him was not approved by the Industrial Tribunal, he continued to be in service and was entitled to all the emoluments. The appellant did not respond to this demand of the 1st Respondent. whereupon, the latter made an application to the Labour Court under S. 33-C(2) for determination and payment of the amount of wages due to him from the date of suspension on the ground that the appellant not having obtained the approval of the Industrial Tribunal to the dismissal under s. 33(2)(b) the Order of dismissal was void and the 1st Respondent continued to be in service and was entitled to receive his wages from the appellant. The appellant resisted this application under S. 33-C(2) inter alia on the ground that the application under S. 33(2)(b) having been withdrawn the position was as if no application bad been made at all, with the result that there was contravention of S. 33(2)(b) but such contravention did not render the order of dismissal void ab Into and it was merely illegal and unless it was set aside in an appropriate proceeding taken by the 1st Respdt. under S. 33-A or a reference under S. 10, the Labour
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Court had no jurisdiction under S. 33-C(2) to direct payment of wages to the 1st Respondent on the basis that he continued in service and the application made by the 1st Respondent accordingly was incompetent.
The Labour Court rejected the contention of the appellant and held that since reference in regard to an industrial dispute between the appellant and the workman was pending before the Industrial Tribunal, it was not competent to the appellant to pass an order of dismissal against the 1st Respondent, unless the action so taken was approved by the Industrial Tribunal under s. 33 (2)(b) and consequently the appellant having withdrawn the application for approval under S. 3 3 (2) (b) and the approval of the industrial Tribunal to the order of dismissal not having been obtained the order of dismissal was ineffective and the Labour Court had jurisdiction to entertain the application of the 1st Respondent under S. 33-C(2) and to direct the appellant- to pay the arrears of wages to the 1st Respondent. The Labour Court accordingly, allowed the application of the 1st Respondent and directed the appellant to pay an aggregate sum of Rs. 6485.48 to the 1st Respondent on account of arrears of wages upto 30th September 1966. Similarly, on identical facts the Labour Court also allowed the application of another workman Shri Jagdish Singh (1st Respondent in Civil Appeal No. 1384 of 1977) and directed the appellant to pay him a sum of Rs. 6286.80 in respect of arrears of wages upto the same date. The appellant thereupon preferred Civil Appeals Nos. 1375 and 1384 of 1977 after obtaining special leave from this Court.
Allowing the appeals, by special leave and converting the arrears of wages into compensation, the Court.
HELD : 1.(a) It is only if an order of dismissal passed in contravention of section 33 (2)(b) is null and void that the aggrieved workman would be entitled to maintain an application under section 33C(2) for determination and payment of the amount of wages due to him on the basis of

that he continues in service despite the order of dismissal. [376 E-F]

(b) A proceeding under section 33C(2) is a proceeding in the nature of executive proceeding in which the Labour Court calculates the amount of money due to a workman from his employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. But the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one. that is to say, already adjudicated upon of provided for and must arise in the course of and in relation to the relation ship between the industrial workmen, and his employer. [376 F-H]

Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar and Ors [1968] 1 SCR 140, referred to.

(c) It is not competent to the Labour Court exercising jurisdiction under section 33(C)(2) to arrogate to itself the functions of an industrial tribunal and entertain a claim which is not based on an existing right but which mat appropriately be made the subject-matter of an industrial dispute in a reference under section 10 of the Act. [376 H, 377 A]

Gopal v. Union of India, [1968]1 L.L.J. 589; Central Bank of India Lta v. S. Rajagopalan etc, [19641 3 S.C.R. 140, applied.

2. (a) The object of the legislature in enacting section 33 clearly appears to be to protect the workman concerned in the dispute which forms the subject-matter of pending conciliation or adjudication-proceedings, against victmisation by the employer on account of his having raised the industrial dispute or his continuing the pending proceedings and to ensure that the pending proceedings are brought to an expeditious termination in a peaceful atmosphere, undisturbed by any subsequent cause tending to further exacerbate the already strained relations between the employer and the workmen. But at the same time it recognises that occasions may arise when the employer may be 372

justified in discharging or punishing by dismissal his employee and so it allows the employer to take such action, subject to the condition that in the one case before doing so, he must obtain the express permission in writing of the Tribunal before which the proceeding is pending and in the other, he must immediately apply to the Tribunal for approval of the action taken by him. [378 F-H]

(b) The only scope of the inquiry before.the Tribunal exercising jurisdiction under section 33 is to decide whether the ban imposed on the employer by this section should be lifted or maintained by granting or refusing the permission or approval asked for by the employer. If the permission or approval is refused by the Tribunal, the employer would be precluded from discharging or punishing the workman by way of dismissal and the action of discharge or dismissal already taken would be void. But the reverse is not true for even if the permission or approval is to be granted that would not validate the action of discharge or punishment by way of dismissal taken by the employer. The permission or approval would merely remove the ban so as to enable the employer to make an order of discharge or dismissal and thus avoid incurring the penalty under section 31(1), but the validity of the order of discharge or dismissal would still be liable to be tested in a reference at the instance of the workmen under section 10. The workman would be entitled to raise an industrial dispute in

regard to the order of discharge or dismissal and have it referred for adjudication under s. 10 and the Tribunal in such reference would be entitled to interfere with the order of discharge or dismissal within the limits held down by this Court in several decisions commencing from Indian Iron
JUDGMENT:
the position which arises when the employer makes an application for permission or approval under section 33 and such permission or approval is granted or refused. [379 D-H, 380 A]
The Punjab National Bank Ltd. v. Its Workmen, [1960] 1 S.C.R. 806 @ 826., Atherton West & Co. Ltd. v. Suti Mills Mazdoor Union and Ors.. [1953] S.C.R. 780, Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup, [1956] S.C.R. 916 applied.
3. (a) The exposition of the statute has to be ex visceribus Actus. No one section of a statute should be read in isolation, but it should be construed with reference to the context and other provisions of the statute, so as, as far as possible, to make a consistent enactment of the whole status. [377 F-G 380 C]
Colguhoun v. Brooks, (1889) 14 A.C. 493 at 506 referred to.
Lincoln College Case [1595] 3 Co. Rep.b referred to.
(b) Section 33 in both its limbs undoubtedly uses language which is mandatory in terms and section 31(1) makes it penal for the employer to commit a breach of the provisions of Section 33 and therefore, if section 33 stood done' it might lend itself to the construction that any action by way of discharge or dismissal taken against the workman would be void if it is in contravention of Section 33. But Section 33 cannot be read in isolation. Section 33 must be construed not as if it were standing alone and apart from the rest of the Act, but in the light of the next following section 33A and if these two sections are read together, it is clear that the legislative intent was not to invalidate an order of discharge or dismissal passed in contravention of section 33, despite the mandatory language employed in the section and the penal provision enacted in section 31(1) [380 B-C, D-E]
4. (a) Section 33A gives to a workman aggrieved by an order of discharge of dismissal passed against him in contravention of section 33, the right to move the Tribunal for redress of his grievance without having to take recourse section 10. [580 H, 381 A]
(b) The first issue which is required to be decided in a complaint filed by an aggrieved workman under section 33A is whether order of discharge or dismissal made by the employer is in contravention of Section 33. The foun-
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dation of the complaint under section 33A is contravention of section 33 and if the workman is unable to show that the employer has contravened section 33 in making the order of discharge or dismissal, the complaint would be liable to be rejected. But if the contravention of section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merits. The Tribunal would have to go into this question and decide whether, on the merits, the order of discharge or dismissal passed by the employer is justified and if it is, the Tribunal would sustain the order, treating the breach of section 33 as a mere technical breach. Since, in such a case, the original order of discharge or dismissal would stand justified, it would not be open to the Tribunal, unless there are compelling circumstances, to make any substantial order of compensation in favour of the workman.

The Tribunal would have to consider all the aspects of the case and ultimately what order would meet the ends of justice would necessarily have to be determined in the light of the circumstances of the case. But mere contravention of section 33 by the employer will not entitle the workman to an order of reinstatement, because inquiry under section 33A is not confined only to the determination of the question as to whether the employer is proved, the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal. [382 H, 383 A-D]

The Automobile Products of India Ltd. v. Rukmaji Bala and Ors. [1955] 1 S.C.R. 1241; Equitable Coal Co. v. Algu Singh, A.I.R. 1958 S.C. 761, Punja National Bonk Ltd. v. Its Workmen, [1960] 1 S.C.R. 806 @ 826, applied.

(c) The very fact that even after the contravention of section 33 is proved, the Tribunal is required to go into the further question whether the order of discharge or dismissal passed by the employer is justified on the merits, clearly indicates that the order of discharge is not rendered void and inoperative by such contravention. [383 E-F]

(d) If the contravention of section 33 were construed as having an invalidating effect on the order of discharge or dismissal, section 33A would be rendered meaningless and fultile because in that event, the workman would invariably prefer to make an application under section 33(C)(2) for determination and payment of the wages due to him on the basis that he continues to be in service. If the workman filed a complaint under section 33A, he would not be entitled to succeed merely by showing that there is contravention of section 33 and the question whether the order of discharge or dismissal is justified on the merits would be gone into by the Tribunal and if, on merits, it is found to be justified, it would be sustained as valid despite contravention of section 33, but if, on the other hand, instead of proceeding under section 33A, he makes an application under section 33C(2), it would be enough for him to show contravention of section 33 and he would then be entitled to claim wages on the basis that he continues in service. Another consequent which would arise on this interpretation would be that if the workman files a complaint under section 33A, the employer would have an opportunity of justifying the order of discharge or dismissal on merits, but if the workman proceeds under section 33C(2), the employer would have no such opportunity. Whether the employer should be able to justify the order of discharge or dismissal on merits would depend upon what remedy is pursued by the workmen, whether under section 33A or under section 33C(2). Such a highly anomalous result could never have been intended by the legislature. If such an interpretation were accepted, no workman would file a complaint under section 33A, but he would always proceed under section 33C(2) and section 33A would be reduced to futility. It is, therefore, impossible to accept the argument that the contravention of section 33 renders the order of discharge or dismissal void and inoperative and if that be so the only remedy available to the workman for challenging the order of discharge or dismissal is that provided under section 33A, apart of course from the remedy under section 10 and he cannot maintain an application under section 33 C(2) for determination and payment of wages on the basis that he continues to be in service. The workman can proceed under section 33 C(2) only after the Tribunal has adjudicated, on a complaint under section 33A or on a reference

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under section 10. that the order of discharge or dismissal passed by tile employer was not justified and has set aside that order and reinstated the workman. [383 H, 384 A-F]
5. 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 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 tinder sections, 31, 10 and 33A may not be as adequate as the workman might wish it to be. [384 G-H, 385 A]
6. Where the Tribunal entertains an application for approval under section 33(2)(b) on merits, it applies its mind and considers whether the dismissal of the workman amounts to victimisation or unfair labour practice and whether a prima facie case has been made out by the employer for the dismissal of the workman. If the Tribunal finds that either no prima facie case has been made out or there is victimisation or unfair labour practice, it would refuse to grant approval and reject the application on merits. Then of course, the dismissal of the workman would be void and inoperative, but that would be because the Tribunal having held that no prima facie case has been made out by the employer or there is victimisation or unfair labour practice, it has refused to lift the ban. Where, however, the application for approval under section 33(2)(b) is withdrawn by the employer and there is no decision on it on merits. it cannot be said that the approval has been refused by the Tribunal. The Tribunal having had no occasion to consider the application on merits, there can be no question of the Tribunal refusing approval to the employer. It cannot be said that where the application for approval is withdrawn, there is a decision by the Tribunal to refuse to lift the ban.. The withdrawal of the application for approval stands on the same footing as if no application under section 33(2)(b) has beer, made at all [385 D-G]
(b) In the instant case the appellant contravened section 33(2)(b) in dismissing the workman 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 33 C(2). [385 G-H]

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1375 and 1384 of 1977.
Appeals by Special Leave from the Judgment and Order dated 14-2-77 of the Addl. Labour Tribunal Chandigarh in I.D. Case' No. 66-67/76 respectively.
AND
Civil Appeal No. 2820 of 1977.
Appeal by Special Leave from the Judgment and Order dated

4th November, 1977 of the Rajasthan Tribunal Court in C.A. No. LC-3 1976.
Soli Sorabjee Addl. Sol. Genl. (for the intervener in CA 2820), Anand Prakash, H. K. Puri & Lakshmi Anand Prakash for the appellants in all the appeals and applicant intervener M/s. Hindustan Copper Ltd.
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R. K. Garg, S. C. Agarwal, Y. J. Francis & Aruneshwar Gupta for the respondents : applicant intervener/Shri N. K. Saxena.
The Judgment of the Court was delivered by
BHAGWATI, J., These two appeals by special leave raises a short but interesting question of law relating to the interpretation of sections 33(2) (b) and 33(c)(2) of the Industrial Disputes Act, 1947 Thereinafter referred to as the Act). The facts giving rise to the two appeals are almost identical and it would, therefore, be sufficient if we set out the facts of only one of the two appeals, namely Civil Appeal No. 1375 of 1977.
The first respondent was a workman employed as an operator in the undertaking of the appellant from 1st March, 1970 and he was in receipt of Rs. 100/- per month as salary which would have been raised to Rs. 115/- per month from 1st August, 1972 if he had continued in service with the appellant. But on 21st December, 1971 the 1st respondent was suspended by the appellant and a chargesheet was served upon him and before any inquiry on the basis of this charge sheet could be held, another chargesheet was given to him on 17th April, 1973. This was followed by a regular inquiry and ultimately the appellant, finding the 1st respondent guilty, dismissed him from ,service by an order dated 23rd December, 1974. Now, at the time when the 1st respondent was dismissed from service, an industrial ,dispute was pending before the Industrial Tribunal at Chandigarh, and therefore, in view of the provisions contained in section 33 (2) (b) of the Act, the appellant immediately approached the Industrial Tribunal, 'before which the industrial dispute was pending, for approval of the action taken by it. The application was resisted by the 1st respondent, but before it came up for hearing, the appellant applied to the Industrial Tribunal for withdrawing the application and the Industrial Tribunal thereupon made an order on 4th September, 1976 dismissing the application as withdrawn. The 1 st respondent then demanded from the appellant full wages from the date of his suspension till the date of demand contending that as the action of the appellant dismissing the 1st respondent was not approved by the Industrial Tribunal, the 1st respondent continued to be in service and was entitled to all the emoluments. The appellant did 'hot respond to this demand of the 1st respondent, whereupon the 1st respondent made an application to the labour Court under section 33C(2) for determination and payment of the amount of wages due to the 1st respondent from the date of suspension, on the ground that the appellant not having obtained the approval of the Industrial Tribunal to the dismissal of the list respondent under section 3 3 (2) (b), the order of dismissal was void and the 1st respondent continued to be in service and was entitled to receive his wages from the appellant. The appellant resisted this application under section 33C (2) inter alia on the ground that the application under section 3 3 (2) (b) having been withdrawn the position was as if no application had been made at all with the result that there was contravention of section 33 (2) (b), but such contravention did not render the order of dismissal void ab initio and it

was merely illegal and unless it was
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set aside in an appropriate proceeding taken by the 1st respondent section 33A or in a reference under section 10, the Labour Court had no jurisdiction under section 3 3C (2) to direct payment of wages to the 1st respondent on the basis that he continued in service and the application made by the 1st respondent was accordingly incompetent.
The Labour Court rejected the contention of the appellant and held that since a reference in regard to an Industrial dispute between the appellant and its workmen was pending before the Industrial Tribunal, it was not competent to the appellant to pass an order of dismissal against the 1st respondent unless the action so taken was approved by the Industrial Tribunal under section 33 (2) (b), and consequently, the appellant having withdrawn the application for approval under section 3 3 (2) (b) and the approval of the Industrial Tribunal to the order of dismissal not having been obtained, the order of dismissal was ineffective and the Labour Court had jurisdiction to entertain the application of the 1st respondent under section 33C(2) and to direst the appellant to pay the arrears of wages to the 1st respondent. The Labour Court accordingly allowed the application of the 1st respondent and directed the appellant to pay an aggregate sum of Rs. 6485.48 to the 1st respondent on account of arrears of wages upto 30th September, 1976. Similarly and on identical facts, the Labour Court also allowed the application of another workman and directed the appellant to pay to him a sum of Rs. 6262.80 in respect of arrears of wages upto the same date. The appellant thereupon preferred Civil Appeals Nos. 1375 and 1384 of 1977 after obtaining special leave from this Court.
The principal question which arises for consideration in these appeals is as to what is the effect of contravention of section 3 3 (2) (b) on an order of dismissal passed by an employer in breach of it. Does it render the order of dismissal void and inoperative so that the aggrieved workman can say that he continues to be in service and is entitled to receive wages from the employer ? It is only if an order of dismissal passed in contravention of section 3 3 (2) (b) is null and void that the aggrieved workman would be entitled to maintain an application under section 33C(2) for determination and payment of the amount of wages due to him on the basis that he continues in service despite the order of dismissal. It is now well settled, as a result of several decisions of this Court, that a proceeding under section 33C(2) is a proceeding in the nature of executive proceeding in which the Labour Court calculates the amount of money due to a workman from his employer, or, if the workman is entitled to any benefit which is capable of being computed in terms of money, proceeds to compute the benefit in terms of money. But the right to the money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between the industrial workman, and his employer. Vide Chief Mining Engineer East India Coal Co. Ltd. v. Rameshwar & Ors.(1) It is not competent to the Labour Court exercising jurisdiction under section 33C(2) to arrogate to itself the functions of an industrial tribunal
(1) [1968] 1 S.C.R. 140.
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and entertain a claim which is not based on an existing right but which may appropriately be made the subject-matter

of an industrial dispute in a reference under section 10 of the Act. Vide Gopaul v. Union of (1). That is why Gajendragadkar, J., pointed out in The Central Bank of India Ltd. v. P. S. Rajagopalan etc. that "if: an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim for the recovery of his salary or wages under section 33C(2). His demotion or dismissal may give rise to an industrial dispute which may be appropriately tried but once it is shown that the employer has dismissed or demoted him, a claim that the dismissal or demotion is unlawful and, therefore, the employee continues to be the workman of the employer and is entitled to the benefits due to him under a preexisting contract, cannot be made under section 33C(2)". The workman, who has been dismissed, would no longer be in the service of the employer and though it is possible that on a reference to the Industrial Tribunal under Section 10 the Industrial Tribunal may find, on the material placed before it, that the dismissal was unjustified, yet until such adjudication is made, the workman cannot ask the Labour Court in an application under section 33C(2) to disregard his dismissal as wrongful and on that basis to compute his wages. The application under section 33C(2) would be maintainable only if it can be shown by the workman that the order of dismissal passed against him was void ab initio. Hence it becomes necessary to consider whether the contravention of section 33(2)(b) introduces a fatal infirmity in the order of dismissal passed in violation of it so as to render it wholly without force or effect, or despite such contravention, the order of dismissal may still be sustained as valid.

The determination of this question depends on the true interpretation of section 33 (2) (b), but it is a well settled rule of construction that no one section of a statute should be read in isolation, but it should be construed with reference to the context and other provisions of the statute, so as, as far as possible, to make a consistent enactment of the whole statute. Lord Herschel stated the rule in the following words in Colguhoun v. Brooks. (3) "It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act." We must therefore, have regard not only to the language of section 33 (2) (b), but also to the object and purpose of that provision, the context in which it occurs and other provisions of the Act in order to determine what the legislature intended should be the effect of contravention of section 33 (2) (b) on the order of dismissal.

(1) [1968] 1 L.L.J.589.
(2) [1964] 3 S.C.R. 140.
(3) [1889] 14 A.C. 493 at 506

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We may first examine the object and purpose for which section 33, of which sub-section 2(b) forms part, has been introduced in the Act. This section, as originally enacted, was in a simple form, but over the years it suffered various charges and in its present form it reads inter alia as follows :

> "33. (1) During the pendency of any conciliation proceeding before a 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,-

(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

(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 in 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".

The object of the legislature in enacting this section clearly appears to be to protect the workman concerned in the dispute which forms the subject-matter of pending conciliation or adjudication proceedings, against victimisation by the employer on account of his having raised the industrial dispute or his continuing the pending proceedings and to ensure that the pending proceedings are brought to an expeditious termination in a peaceful atmosphere, undisturbed by any subsequent cause tending to further exacerbate the already strained relations between the employer and the workmen. But at the same time it recognises that occasions may arise when the employer may be justified in discharging or punishing by dismissal his employee and so it allows the employer to take such action, subject to the condition that in the one case before doing so, he must obtain the express permission in writing of the Tribunal before which the proceeding is pending and in the other, he must immediately apply to the Tribunal for approval of the action taken by him. On what principles however is the Tribunal to act in granting or refusing permission or approval and what is the scope of the inquiry before it when it is moved under this section ? This ques-
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tion came up for consideration and was decided by this Court in Atherton West & Co. Ltd. v. Suti Mill Mazdoor Union & Ors. (1) and Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup(2) and Gajendragadkar, J, summarised the effect of these two decisions in the following words in The Punjab National Bank, Ltd. v. Its Workmen.(8)

"Where an application is made by the employer for the requisite permission under S. 33 the jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimisation or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a prima facie case has been made out or not. In these proceedings it is not open to the

> tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it according as it holds that a prima facie case is or is not made out by the employer."

It will be seen that the only scope of the inquiry before the Tribunal exercising jurisdiction under section 33 is to decide whether the ban imposed on the employer by this section should be lifted or maintained by granting or refusing the permission or approval asked for by the employer. If the permission or approval is refused by the Tribunal, the employer would be precluded from discharging or punishing the workman by way of dismissal and the action of discharge or dismissal already taken would be void. But the reverse is not true for even it the permission or approval that would not validate the action of discharge or is granted punishment by way of dismissal taken by the employer. The permission or approval would merely remove the ban so as to enable the employer to make an order of discharge or dismissal and thus avoid incurring the penalty under section 31 (1), but the validity of the order of discharge or dismissal would still be liable to be tested in a reference at the instance- of the workmen under section 10, Vide Atherton West & Co.'s case and the Punjab, National Bank case. The workman would be entitled to raise an industrial dispute in regard to the order of discharge or dismissal and hive it referred for adjudication under s. 10 and the Tribunal in such reference would be entitled to interfere with the order of discharge or dismissal within the limits laid down by this Court in several decisions commencing from Indian Iron & Steel Co. Ltd. v. Their Workmen(4).

This is the position which arises when the employer makes an application for permission or approval under section 33 and such permission

(1) [1953] S.C.R, 780.
(2) [1956] S.C.R. 916.
(3) [1960] 1 S.C.R. R06 at 826.
(4) [1958] S.C.R. 667.

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contravention of section 33, the fight to move the Tribunal for redress of his grievance without having to take recourse to section 10.

Now, what is the scope of the inquiry under Section 33A when a 'workman aggrieved by an order of discharge or dismissal passed in contravention of section 33 makes a complaint in writing to the Tribunal under section 33A. This question also is not res integra and it has been decided by this Court in a number of decisions. The first case where this question came up for consideration was The Automobile Products of India Ltd. v. ukmaji Bala & Ors. (1) where the Court was called upon to construe section 23 of the Industrial Disputes (Appellate Tribunal) Act 1950 which corresponded to section-33A of the Act. Section 23 conferred a right on a workman aggrieved by an order of discharge or dismissal passed in contravention of section 22 to make a complaint to the Labour Appellate Tribunal and on receiving such complaint, the Labour Appellate Tribunal was empowered to decide it as if it were an appeal pending

before it. Section 22 of the Industrial Disputes (Appellate, Tribunal) Act, 1950 was in almost identical terms as section 33 of the Act. Das, J., who delivered the judgment of the Court, observed while construing section 33A of the Act and the corresponding section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 that the scheme of these sections "indicates that the authority to whom the complaint is made is to decide both the issues, viz., (1) the effect of contravention, (2) the merits of the act or order of the employer". The provisions of these two sections, said the learned. Judge quite clearly show that "that the jurisdiction of the authority is not only to decided whether there has been a failure on the part of the employer to obtain the permission of the authority before. taking action but also to go into the merits of the complaint and grant appropriate reliefs". It was urged before the Court that in holding an inquiry under section 33A, the duty of the Tribunal is only to find out whether there has been a contravention of section 33 and if it finds that there is such contravention, to make a declaration to that effect and no further question can thereafter arise for consideration in such inquiry. This contention was however, rejected.

The same question was again raised before this Court in Equitable Coal Co. v. Algu Singh(2) and in this case, the Court, following its previous decision in Automobile Products of India Ltd. v. Rukmani Bala (supra) pointed out in a very clear and lucid exposition of the subject :

> "The breach of the provisions of S. 22 by the employer is in a sense a condition precedent for the exercise of the jurisdiction conferred on the Labour Appellate Tribunal by S. 23. As soon as this condition precedent is satisfied the employee is given an additional right of making the employed's conduct the subject matter of an industrial dispute without having to follow the normal procedure laid down in the Industrial Disputes Act. In an enquiry held under s. 23 two questions fall to be considered Is the fact of contravention by the

(1) [1955] 1 S.C.R.1241.
(2) A.I.R. 1958 S.C. 761.

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> employer of the provisions of S. 22 proved ? If yes, is the Y" order passed by the employer against the employee justified on the merits ? If both these questions are, answered in favour of the employee. the Appellate Tribunal would no doubt be entitled to pass an appropriate order in favour of the employee. If the first point is answered in favour of the employee, but on the second point the finding is that, on the merits the order passed by the employer against the employee is justified, then the breach of S. 22 proved against the employer may ordinarily be regarded as a technical breach and it may not unless there are compelling facts in favour of the employee justify any substantial order of compensation in favour of the employee. It is unnecessary to call that, if the first issue is answered against the employee, nothing further can be done under S. 23. What orders would meet the ends of justice in case of a

technical breach of S. 22 would necessarily be a question of fact to be determined in the light of the circumstances of each case. In view of the decision of this Court in 1955-1 S.C.R. 1241 : (S) (AIR 1955 S.C. 258) (A), it would be impossible to accept Mr. Sen's argument that the only order which can be passed in proceedings under S. 23 is to grant a declaration that the employer has committed a breach of the provisions of S. 22. In Atherton West & Co. Ltd., Kanpur v. Suti Mill Mazdoor Union 1953 S.C.R. 780 : (AM 1953 S.C. 241) (B), this Court has expressed a similar view in regard to provisions of S. 23 of the Act."

The same view was reiterated by this Court in Punjab National Bank case (supra) where Gajendragadkar, J., speaking on behalf of the Court, pointed out that there can be no doubt that in an enquiry under Section 33A the employee would not succeed in obtaining' an order of reinstatement merely by proving contravention of S. 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered under section 33A. Therefore, we cannot accede to the argument that the enquiry under section 33A is confined only to the determination of the question as to whether the alleged contravention by the employer of the provisions of section 33 has been proved or not."

It will, therefore, be seen that the first issue which is required to be decided in a complaint filed by an aggrieved workman under section 33A is whether the order of discharge or dismissal made by the employer is in contravention of section 33. The foundation of the complaint under section 33A is contravention of section 33 and if the workman is unable to show that the employer has contravened section 33 in making the order of discharge or dismissal, the complaint would be liable to be rejected. But if the contravention of section 33 is

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established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merits. The Tribunal would have to go into this question and decide whether, on the merits, the order of discharge or dismissal passed by the employer is justified and if it is. The Tribunal would sustain the order, treating the breach of section 33 as a mere technical breach. Since in such a case, the original order of discharge or dismissal would stand justified, it would not be open to the Tribunal, unless there are compelling circumstances, to make any substantial order of compensation in favour of the workman. In fact in Equitable Coal Co.'s case an order of compensation made by the Tribunal in favour of the workman was reserved by this Court. The Tribunal would have to consider all the aspects of the case and ultimately what order would meet the ends of justice would necessarily have to be determined in the light of the circumstances of the case. But this much is clear that mere contravention of section 33 by the employer will not entitle the workman to an order of reinstatement, because inquiry under section 33A is not confined only to the determination of the question as to whether the employer has contravened section 33, but even

if such contravention is proved, the Tribunal has to go further, and deal also with the merits of the order of discharge or dismissal.

Now, if the effect of contravention of section 33 were to make the order of discharge or dismissal void and inoperative, the workman would straightaway be entitled to an or of reinstatement as soon as he establishes in the complaint made by him under section 33A that the employer has contravened section 33 in making the order of discharge or dismissal. There would be no need to go into the further of discharge or dismissal passed by the employer is justified on the merits. If is difficult to imagine how the law can permit an order of discharge or dismissal Which is void and inoperative to be justified on the merits. There can be no question of justification on merits of an order of discharge or dismissal which is found to be null and void very fact that even after the contravention of section 33 is proved, the Tribunal is required to go into the further question whether the order of discharge or dismissal passed by the employer is justified on the merits, clearly indicates that the order of discharge is not rendered void and inoperative by such contravention. It is interesting to note that Gajendragadkar, J., speaking on behalf of the Court in Equitable Coal Co. case, characterised the breach of section 33 as a technical breach not having any invalidating consequence on the order of discharge or dismissal. If the scope of the inquiry under section 33A is what is has been held to be in the decisions in Automobile Products of India, Equitable Coal Co. and the Punjab National Bank cases, the conclusion must inevitably follow that the contravention of section 33 does not render the order of discharge or dismissal void and of no effect.

It is also significant to note that if the contravention of section 33 were construed as having an invalidating effect on the order of discharge or dismissal, section 33A would be rendered meaningless and futile, because in that event, the workman would invariably prefer to

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make an application under section 33C(2) for determination and payment of the wages due to him on the basis that he continues to be in service. If the workman files a complaint under section 33A, he would not be entitled to succeed merely by showing that there is contravention of section 33 and the question whether the order of discharge or dismissal is justified on the merits would be gone into by the Tribunal and if, on the merits, it is found to be justified, it would be sustained as valid despite contravention of section 33, but if, on the other hand, instead of proceeding under section 33A, he makes an application under section 33C(2), it would be enough for him to show contravention of section 33 and he would then be entitled to claim wages, on the basis that the continues in service. Another consequence which would arise on this interpretation would be that if the workman files a com-plaint under section 33A, the employer would have an opportunity of justifying the order of discharge or dismissal on merits, but if the work-man proceeds under section 33C(2), the employer would have no such opportunity. Whether the employer should be able to justify the order of discharge or dismissal on merits would 'depend upon what remedy is pursued by the workman, whether under section 33A or under section 33C(2). Such a highly anomalous result could never have been intended by the legislature. If such an interpretation were accepted, no workman would file a complaint under section 33A, but he would always proceed

under section 33C(2) and section 33A would be reduced to futility. It is, therefore, impossible to accept the argument that the contravention of section 33 renders the order of discharge or dismissal void and inoperative and if that be so, the only remedy available to the workman for challenging the order of discharge or dismissal is that provided under section 33A, apart of course from the remedy under section 10, and he cannot maintain an application under section 33C(2) for determination and payment of wages on the basis that he continues to be in service. The workman can proceed under section 33C(2) only after the Tribunal has adjudicated, on a complaint under section 33A or on a reference under section 10, that the order of dis-charge or dismissal passed by the employer was not justified and has set aside that order and reinstated the workman.

It was urged on behalf of the workman that if this view were taken, it would rob the workman of the protection afforded to him under section 33 and the object and purpose of the section would be defeated because the employer would then, with impunity, discharge or dismiss workman without complying with the requirements of section 33. But we do not think this apprehension of the workman is well founded. If 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 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 sec-tion 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 exer-

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cising 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. It is entirely a matter of legislative policy to decide what consequences should flow from contravention of a statutory provision and what remedy should be provided to an aggrieved workman in case of such contravention.

We may now refer to one last contention urged on behalf of the workman. That contention was that the pp.-sent case was not one in which no application for approval was made by the appellant to the Industrial Tribunal and there was thus contravention of section 33(2) (b), but an application for approval was made under section 33 (2) (b) and this application did not result in grant of approval, since it was withdrawn. It was argued that this was tantamount to refusal of approval and the ban imposed by section 3 3 (2) (b), therefore, continued to operate and the order of dismissal passed by the appellant was void and inoperative. This contention of the workman is, in our ,opinion, without force, for it equates, in our opinion, erroneously the withdrawal of the application under section 33 (2) (h) with its dismissal on merits. Where the Tribunal entertains an application for approval under section 33 (2) (b) on merits, it applies its mind and considers whether the dismissal of the workman amounts to victimisation or unfair labour practice and whether a prima facie case has been made out by the employer for the dismissal of the workman. If the Tribunal finds that either no prima facie case has been made

out or there is victimisation or unfair labour practice, it would refuse to grant approval and reject the application on merits. Then of course the dismissal of the workman would be void and inoperative, but that would be because the Tribunal having held that no prima facie case has been made out by the employer or there is victimisation or unfair labour practice it has refused to lift the ban. Where, however, the application for approval under section 33 (2) (b) is withdrawn by the employer and there is no decision on it on merits, it is difficult to see how it can be said that the approval has been refused by the Tribunal. The Tribunal having had no occasion to consider the application on merits there can be no question of the Tribunal refusing approval to the employer. It cannot be said that where the application for approval is withdrawn, there is a decision by the Tribunal to refuse to lift the ban. The withdrawal of the application for approval stands on the same footing as if no application under section 33 (2) (b) has been made at all.

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). But since we are exercising our extraordinary jurisdiction under Article 136, we are not bound to set aside the order of the Labour Court directing the appellant to pay the respective sums of Rs. 6485.48 and Rs. 6262.80 to the workmen unless the justice of the

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case so request. We think that the demands of social justice are pardisputes and, 'therefore, even amount while dealing with industrial though the Labour court was not right in allowing these applications, we do not think we should exercise our overwinding jurisdiction under Article 136 to set aside the orders of the Labour Court directing the appellant to pay the respective sums of Rs. 6485.48 and Rs. 6262.80 to the workmen. We do not, therefore interfere with this part of the orders of the Labour Court, and the amounts ordered to be paid by the Labour Court may be treated as compensation instead of wages. The amounts which have already been paid by the appellant to the workmen pursuant to the orders of the Labour Court or in compliance with the directions given by this Court during the pendency of these appeals, will be adjusted against the amounts ordered to be paid to the workmen. We may make to clear that this order shall not be construed as precluding the workmen from, pursuing the remedy under Section 33A or Section 10. Since at the time of grant of special leave in these appeals it was made a condition by this Court that the appellant should in any event pay the costs of the workmen, we direct that, though the appellant has succeeded, the appellant will pay the costs of these appeals to the workmen. We are told that such costs have already been paid by the appellant to the workmen.

C.A. No. 2820 of 1977.

This appeal by special leave is directed against the order made by the Labour Court granting the application made by the 1st respondent under section 33C(2) and directing the appellant to pay wages to the 1st respondent on the basis that the order of dismissal passed against him was void and ineffective and the 1st respondent continued LO be in service. It is not necessary to set out the facts giving rise to this appeal since the only question of law which

arises in this appeal has been disposed of by us today in a judgment delivered in Civil Appeals Nos. 1375 and 1384 of 1977 and having regard to that judgment, it is clear that the 1st respondent was not entitled to maintain the application under section 33C(2) without adjudication from a proper authority, either oh a complaint under section 33A or in a reference under section 10, that the order of dismissal passed against him was unjustified and directing his reinstatement.

We accordingly allow the allow the appeal set aside the judgment and order passed by the Labour Court and reject the application under section 33C(2) made by the 1st respondent Since at the time of grant of special leave in this appeal it was made a condition by this court that the appellant should in any event pay the costs of the workmen, we direct that, though the appellant has succeeded, the appellant will Pay the costs of this appeal to the workman. We are told that such costs have already been paid by the appellant to the workman.

S.R. Appeals allowed.

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