ï»¿CASE NO.:
Appeal (civil) 1718 of 1998

PETITIONER:
BLUE STAR EMPLOYEES UNION

RESPONDENT:
EX. OFF. PRINCIPAL SECY TO GOVERNMENT AND ANR.

DATE OF JUDGMENT: 26/09/2000

BENCH:
S. RAJENDRA BABU & D.P. MOHAPATRA

JUDGMENT:
JUDGMENT

2000 Supp(3) SCR 403

The Judgment of the Court was delivered by

RAJENDRA BABU, .1. Certain disputes having arisen between the appellant union and respondent No. 2, a reference was made to the Industrial Tribunal [hereinafter referred to as 'the Tribunal'] in I.D. No. 2 of 1990. Pending adjudication of the said dispute, it is alleged that respondent No. 2 coerced the workmen to individually enter into settlement under Section 18(1) of the Industrial Disputes Act, 1947 [hereinafter referred to as 'the Act']. However, Balanarsimha and Mallesh refused to sign the settlement. Thereafter, the respondent No. 2 is stated to have notified the seniority list of mechanics of the weigh bridge/weighing machines department, while Mallesh was transferred, orders of termination of service of Balanarsimha and another was made. The seniority list exhibited was for the purpose of termination of the services of the said Mallesh Balanarsimha and Mallesh made a complaint under Section 33-A of the Act complaining that the provisions of Section 33 of the Act had not been complied with in modifying their conditions of service. An award was made by the Tribunal holding that the termination of services of Balanarsimha and Mallesh is justified and dismissed the complaint. Thereafter, an industrial dispute was sought to be raised and the Government by an order made on April 8, 1991 stated that the dispute raised does not merit reference for adjudication as the Tribunal has passed awards dismissing the cases of Balanarsimha and Mallesh. This order was challenged before the High Court in a writ petition. The learned Single Judge took the view that the workmen cannot avail two opportunities for the same relief once on appearing before the Labour Court in individual capacity under Section IO(2-A) of the Act although application was made under Section 33-A of the Act and second by employees union of which the appellant is a member and, therefore, the Government is right in rejecting the application. This view on being affirmed on appeal before the division bench, this appeal by special leave is filed.

It is not clear from the order of the learned Single Judge of the High Court as to how the conclusion could be drawn that an application or complaint under Section 33-A of the Act could become a reference to the Tribunal under Section 10(2-A) of the Act. The only complaint made by the workmen was in their individual capacity under Section 33-A of the Act and not as contemplated under Section 10(2-A) of the Act. Neither the learned Single Judge nor the division bench considered the scope of the proceedings arising under Section 33-A of the Act and the effect of findings recorded in such an inquiry. The Division Bench proceeded on the basis that the complaint before the Tribunal having been adjudicated the award would operate as res judicata.

Learned counsel for the appellant contended that if the real scope of Section 33-A of the Act is borne in mind, there is no impediment in the present case to make reference under Section 10 of the Act, notwithstanding

the awards in question. He further submitted that the awards in question could not have decided the question that the dismissal of the workmen is justified without first examining whether such termination of service is contrary to Section 33 of the Act which alone gave competence to the Tribunal to proceed further in the matter. We find force in this contention. However, Shri V.R. Reddy, learned senior counsel for the respondent, very strenuously contended that there was no dispute before the Tribunal as to the jurisdiction and, therefore, there was no occasion for the Tribunal to give a finding on that aspect of the matter on question whether there has been any contravention of the terms of Section 33 of the Act to attract the reliefs sought for under Section 33-A of the Act. This argument ignores the essential requirement of Section 33-A of the Act. Section 33-A of the Act, in fact, involves consideration of two aspects of the matter, firstly, whether there has been any violation or contravention of the provisions of Section 33 of the Act and secondly, whether the act complained of is justified or not. Therefore, violation or contravention of the provisions of Section 33 of the Act would be the justification for the authority concerned to entertain an application under Section 33-A of the Act. If this essential requirement is forgotten and if an authority decides a question as to whether the act complained of under Section 33-A of the Act is justified or not cannot in a matter of this nature operate as res judicata or cannot be treated to have decided the dispute between the parties.

A complaint can be made to the Tribunal under Section 33-A of the Act if there has been violation or contravention of the provisions of Section 33 of the Act and if it is found that there has, in fact, been such a contravention the Tribunal can proceed to adjudicate the dispute contained in a complaint on its merits. Thus violation or contravention of the provisions of Section 33 of the Act would be the basic question that arises for consideration and before giving any relief to an aggrieved employee under this section, the Tribunal has to find out whether the employer's action falls within one of the following prohibitions contained in Section 33 of the Act :

(i) If the dispute pending adjudication has nothing to do with the alteration in conditions of service of a workman in contravention of Section 33(l)(a) of the Act or alteration of conditions of service of a 'protected workman' within Section 33(1) of the Act;

(ii) Discharges or punishes a workman by dismissal or otherwise for a misconduct connected with the pending dispute, without obtaining prior express permission in writing of the appropriate authority as required by Section 33(1 )(b) of the Act;

(iii) Discharges or punishes a 'protected workman' by dismissal or otherwise for a misconduct not connected with the pending dispute, without obtaining prior express permission in writing of the appropriate authority as required by Section 33(3)(b) of the Act read with Section 33(l)(b) of the Act; or

(iv) Discharges or punishes a workman by dismissal or otherwise for a misconduct not connected with the pending dispute, without complying with the provisions of proviso to Section 33(2)(b) of the Act.

Thus, the contravention of the provisions of Section 33 of the Act is the foundation for exercise of the power under Section 33 of the Act. If this issue is answered against the employee, nothing further survives for consideration or action by the Tribunal under Section 33 of the Act. In other words, an application under Section 33-A of the Act without proof of contravention of Section 33 of the Act would be incompetent. This is the view expressed by this Court in several decisions including the decisions in Punjab National Bank v. Their Workmen, (1959) II L.L.J. 666; Punjab Beverages Pvt. Ltd. v. Suresh Chand, (1978) II L.L.J. 1 and Syndicate Bank Ltd. v. K. Ranmath v. Bhat, (1967) II L..L.J. 745. Indeed this Court in

Orissa Cement Ltd., Rajganpur v. Their Workmen & Anr.. (I960) II L.L.J. 91, while dealing with the identical provisions as contained in Sections 33 and 33-A of the Act in a complaint made under Section 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950 examined this contention that the finding of the Appellate Tribunal in the proceedings instituted under Section 23 of the Appellate Tribunal Act amounted to res judicata and it was not open to the Tribunal to consider the validity or the propriety of the impugned order of discharge in the reference. The Tribunal in that case had held that on the earlier occasion the Appellate Tribunal had found that there was no contravention of Section 22 and that was really decisive of the proceedings and held that the alternative finding made in the said proceedings on the merits was no more than obiter and cannot be pleaded in support of the bar of res judicata. This Court was not prepared to hold that this view is erroneous and, therefore, the Tribunal was justified in dealing with the merits of the dispute.

In the present case, we have been taken through in detail the award made in the case of Balanarsimha and Mallesh and we find that the Tribunal has not focused its attention to the first of the question whether there has been any contravention of Section 33 of the Act to enable it to proceed further to decide whether the employee is entitled to any relief under the Act or not. To merely consider the question that the employee is not entitled to the relief without examining firstly the question whether the act complained of is in contravention of Section 33 of the Act will be one made as observed by this Court in Orissa Cement Ltd case as obiter or as one made without fulfilling the condition precedent to exercise of power under Section 33-A of the Act and, therefore, could not proceed to give a finding as to whether the termination of service of the workman is justified or not.

For the reasons aforesaid, we think, the High Court is not justified in dismissing the writ petitions and in writ appeal upholding that order. We, therefore, set aside the orders of the High Court and quash Letter No. 362/ Lab. I(AI)/91-1 dated April 8, 1991 issued by the Government declining to make a reference under Section 10(2-A) of the Act, with a direction to the Government to make a reference for adjudication of the dispute raised before it within a period of three months from today. This appeal is, therefore, allowed. In the circumstances, there shall be no order as to costs.