

PETITIONER:
DISTRICT TRANSPORT MANAGER (ADMN.), O.S.R.T.C., ORISSA

Vs.

RESPONDENT:
DILIP KUMAR NAYAK & ANR.

DATE OF JUDGMENT: 29/11/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.

Leave granted.

This appeal by special leave arises from the judgment of the Division Bench of the Orissa High Court in CJC No. 1970/89 dated 19th July, 1991. The respondent No. 1 was a conductor in the appellant-Corporation. While he was posted in the District of Baripada, he committed misconduct, Disciplinary enquiry was conducted against him and on proof of his misconduct, he was dismissed from service, while Industrial Dispute Case No.25 of 1981 under Section 10(1) (d) of the Industrial Disputes Act, 1947 [for short, the "Act"] was pending decision. The respondent filed an application under Section 33 (1) (a) of the Act contending that since the dispute relating to an employee in Bhadrak zone was pending adjudication in the Industrial Tribunal, without the leave of the Tribunal under Section 33-A his service could not be terminated. The Tribunal dismissed the petition but in the writ petition, the Division Bench in the impugned judgment has set aside that order and held that the order of dismissal is bad in law. It is now admitted that pending this appeal, the respondent was reinstated in September 1993 on his undertaking that he will not claim any back-wages.

The question is: whether the view taken by the High Court is correct in law? It is not in dispute that for administrative convenience, efficacy and coordinated transport operations and transaction of business, the Corporation by its resolution created divisions, zones and special zones, with regard to the area of its operation under the Motor Vehicles Act. The respondent is working in Baripada Zone, while the pending dispute in the Industrial Dispute case relates to the employee working in Bhadrak Zone.

It is seen that this Court in *Isha Steel Treatment, Bombay v. Association of Engineering Workers, Bombay & Anr.* [(1987) 2 SCC 203] had considered a similar question whether there was functional integrity between the office at the Churchgate and the factory at Trombay. It was held that in the absence of any functional integrity, separate offices

could be created as independent units and they cannot be deemed as one unit. In support thereof, this Court had relied on an earlier judgment in *Workmen v. Straw Board Manufacturing Co. Ltd.* [(1974) SCC 681]. The same ratio applies to the facts of this case. As stated earlier, for efficient transaction of the business and coordinated services of the transport operations, several zones have been created by the Corporation and each zone is independent of its operational efficacy. Therefore, all the zones are not an integral part or parcel of coordinated transport service as a single unit. In these circumstances, the decision of the High Court that all the zones would be considered to be an integral unit of the Corporation and pendency of industrial dispute in respect of one employee of a different zone would be a bar for the management to take disciplinary action against an employee in that particular zone is clearly wrong. We are of the opinion that in such a case there is no need for the management to seek and obtain leave of the Industrial Tribunal under Section 33a-A of the Act.

The appeal is accordingly disposed of. However, in view of the understanding between the appellant and the workmen and as he has already been reinstated without any back-wages, this order would not stand as an impediment in the way of the respondent to continue to be in service. No costs.