

PETITIONER:
SYNDICATE BANK LTD.

Vs.

RESPONDENT:
K. R. V. BHAT

DATE OF JUDGMENT:
22/08/1967

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
HIDAYATULLAH, M.

CITATION:
1968 AIR 231 1968 SCR (1) 327
CITATOR INFO :
R 1990 SC1080 (10,17)

ACT:
Industrial Disputes Act, 1947 (14 of 1947) s. 33--Dismissal of employee with immediate effect--Dismissed employee files appeal--Appeal dismissed--Effective date of dismissal--Industrial dispute referred after original dismissal order but before disposal of appeal--If necessary to comply with, proviso to s. 33(2)(b).

HEADNOTE:

After holding a domestic enquiry the Managing Director of the appellant-Bank dismissed the respondent-employee with immediate effect. The employee was informed that he might appeal against this order to the working committee of the Directors within certain days. The respondent filed the appeal which the working committee dismissed. Subsequent to the filing of the appeal but prior to its dismissal, the Central Government referred to an Industrial Tribunal the question as to whether action, by the appellant-Bank, in discontinuing pigmy collection and payment thereof to the workmen, was justified. The respondent filed a complaint to the Industrial Tribunal alleging that the appellant contravened s. 33 of the Industrial Dispute Act as the order of dismissal had been passed during the pendency of an Industrial Dispute, the management should have asked the Industrial Tribunal for approval of their action, and they should have paid him one month's wages. The Industrial Tribunal held that the dismissal of the respondent became effective only after the working committee disposed of the appeal, and as during this period an Industrial Dispute was pending the management was bound to comply with the proviso to s. 33 (2) (b) of the Act. In appeal to this Court. Held: There was no contravention of s. 33.

An order of discharge or dismissal, can be passed only once; and, in this case, the order of dismissal was the original or very first passed by the Managing Director, on which date the Industrial Dispute had not even been referred, for adjudication. No doubt, either by virtue of the Standing Orders, or by virtue of a contract, of service, a right of appeal may be given to a workman concerned, to challenge an order of dismissal. But the appellate authority only

considers whether the order of dismissal has to be sustained or whether it requires modification. Further, the proviso to s. 33(2) (b) when it refers to payment of wages for one month, also indicates that it relates to an order of discharge or dismissal which comes into effect immediately. The payment of one month's salary or wages, is to soften the rigour of unemployment that will face the workman, against whom an order of discharge or dismissal, has been passed. If the management has to wait for the minimum period prescribed for filing an appeal, also await the termination of the appeal when one is filed, considerable time would have elapsed from the date of the original order, during which period the workman would not have received any salary. [333F-334B]

Equitable Coal Ltd. v. Tlgu Singh [1958] 1. L.L.J. 793 The Punjab National Bank Ltd. v. Its Workmen [1960] 1 S.C.R. 806, and Straw. board Manufacturing Co. v. Gobind [1962] Supp. 3 S.C.R. 618 relied 328

The Management of Hotel Imperial v. Hotel Workers' Union [1960] 1 S.C.R. 476, and Collector of Customs, Calcutta v. East India Commercial Co. Ltd. [1963] 2 S.C.R. 563 held inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 503 of 1966. Appeal by special leave from the Award dated November 10, 1964 of the Industrial Tribunal, Andhra Pradesh in Misc. Petition No. 32 of 1964 in Industrial Dispute No. 4 of 1964. R. H. Gokhale, B. K. Seshu, Parameshwara Rao, Jyotana R. Melkote and R. V. Pillai, for the appellant. M. K. Ramamurthi, Shyamala Pappu and Vineet Kumar, for the respondent.

The Judgment of the Court was delivered by Vaidialingam, J. This appeal, by special leave, is directed against the award, dated November 10, 1964, of the Industrial Tribunal, Andhra Pradesh, Hyderabad, accepting a complaint, filed by the respondent, under S. 33A, of the Industrial Disputes Act, 1947 (Act XIV of 1947) (hereinafter called the Act).

The respondent was, at the material time, working in the main branch of the appellant, at Belgaum. By order dated March 8, 1963, the respondent was transferred to Bhatkal branch, as a 'C' rank Officer, to work there, as an accountant. He was also informed that he was being relieved, so as to enable him to proceed to duty, at the place of transfer, by March 18, 1963. He was allowed three days' joining time.

On March 13, 1963, the Manager of the Branch at Belgaum informed the respondent that he was relieved, with effect from that date, to join duty at the Bhatkal branch, by March 18, 1963. The respondent, by letter dated March 14, 1963, after setting out the various matters therein, applied for privilege leave, for ninety days, from March 14, 1963 to June 11, 1963, so as to enable him to improve his health and also to attend to certain domestic matters. But the Bank, the appellant herein, desired him, by their letter dated March 23, 1963, to join duty and then apply for leave, if necessary. Some further correspondence ensued, between the Bank and the respondent, the respondent again making a request for sanction of his leave and the appellant Bank insisting upon his joining duty, according to the order of transfer, and then applying for leave. But, as the

respondent did not join duty at the Bhatkal branch, though he was relieved from the Belgaum office, the appellant, by their communication, dated July 23, 1963, desired the respondent to offer explanation for not obeying the order of transfer. The respondent sent a reply, on July 29, 1963, stating what, according to him, were the reasons for his not joining duty at the transferred office. The appellant Bank, not satisfied with the explanation, given by the respondent, framed two charges against him, and communicated the same, on August 7, 1963. The charges were to the effect that (a) the respondent, by wilfully disobeying the lawful and reasonable transfer order of

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the management, has committed gross misconduct, for which the punishment is dismissal from service; and (b) the respondent had absented himself from duty from March 14, 1963, without leave, which again, is a minor misconduct for which also punishment can be imposed. The respondent was also directed to submit his explanation, if any, to the charges, on or before August 25, 1963. The respondent offered his explanation to the charges, by his letter, dated August 21, 1963. The appellant informed the respondent, on October 1, 1963, that an enquiry would be conducted against him, in respect of the charges, on October 5, 1963 and desired him to be present at the enquiry, with the necessary evidence, in support of his defence.

The inquiry was conducted by the Enquiry Officer, in which the respondent participated. The Enquiry Officer sent a report to the Managing Director of the Bank, dated October 28, 1963, substantially finding the respondent guilty of both the charges. In respect of the first charge of gross misconduct, for wilfully disobeying the order of transfer, the Enquiry Officer had proposed that the respondent should be dismissed and, in respect of the second charge, of absenting without leave, it was proposed in the report that the increment be stopped, for a period of six months, with effect from April 25, 1963. Certain consequential proposals were also made, as to how exactly the respondent's absence, was to be dealt with.

The Managing Director of the Bank, after considering the report submitted by the Enquiry Officer, as well as the further explanation, offered by the respondent, in respect of the findings recorded in the said report, by his order dated November 12, 1963, agreed with the recommendation of the Enquiry Officer, dismissed the respondent from the service of the Bank with immediate effect, for the offence of wilful disobedience of the order of transfer. The respondent was also informed that he might appeal, against the order of dismissal, to the working committee of the Directors of the Bank, within forty-five days of receipt of the order.

The respondent filed an appeal, on December 17, 1963, before the working committee of the Directors, wherein he attacked the various proceedings, culminating in the order of dismissal, passed against him. Intimation of the hearing of the appeal was given to the respondent. But, it is seen that on the date when the appeal was taken up for hearing, viz., March 20, 1964, the respondent was not present either in person or through authorised representative of his. In consequence, the working committee of the Directors dismissed the appeal on March 20, 1964. In the appellate order, the working committee has elaborately considered the various circumstances necessitating the conduct of the enquiry, the enquiry proceedings and the answers given by the respondent; and it has, ultimately, agreed with the findings

recorded

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in the enquiry proceedings that the respondent had wilfully disobeyed the lawful orders of the management transferring him. The result was that the order of dismissal, passed by the Managing Director on November 12, 1963, was confirmed.

At this stage it may be mentioned that the Central Government had referred, on January 8, 1964, for adjudication, to the Industrial Tribunal, of which Dr. Mir Siadat Ali Khan was appointed as the presiding officer, with headquarters at Hyderabad, the question as to whether action, by the appellant Bank, in discontinuing pigmy collection and payment thereof to the workmen, was justified. This was numbered as I. D. No. 4 of 1964, and the award, in this dispute, was given on August 26, 1964, and the Central Government published the same, in the Gazette of India, on September 7, 1964.

The respondent filed a complaint, under s. 33A of the Act, on June 4, 1964, before the Central Government Industrial Tribunal, at Hyderabad, attacking the enquiry proceedings, conducted against him, and the order of dismissal, passed by the appellant. Apart from attacking the inquiry proceedings, on merits, as mala fide, the respondent contended that the order of dismissal had been passed against him, without the appellant Bank complying with the provisions of the proviso to s. 33(2)(b), of the Act. According to him, inasmuch as the order of dismissal had been passed, during the pendency of I. D. No. 4 of 1964, the management should have asked the Industrial Tribunal for approval of their action, and they should have paid him one month's wages. Therefore, inasmuch as these things were not done, the appellants have contravened the provisions of s. 33 of the Act.

The appellant Bank, in their counter-statement, pleaded that the domestic enquiry, conducted by the management, was very fair and that the action of the management, in dismissing the respondent, was perfectly justified. In this connection, the appellant raised the contention that the respondent was not a 'workman', and that, in any event, he was not a workman concerned with the dispute covered by I.D. No. 4 of 1964, and therefore he was not entitled to file an application, under s. 33A. They further contended that there was no contravention 'of s. 33 of the Act, because, at the time when the order dismissing the respondent was passed, on November 12, 1963, there was no industrial dispute pending, so as to make it obligatory on the part of the appellant, to take action, in accordance with the proviso to s. 33(2)(b), of the Act.

The Industrial Tribunal, by its order, under attack, has overruled all the objections, raised by the management. The Tribunal has held that the respondent was a 'workman' and that he was also a workman concerned in I. D. No. 4 of 1964, and therefore

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he was competent to file an application, under s. 33A. The Tribunal has also held that the dismissal of the respondent became effective only on March 20, 1964, when the working committee of the Directors of the appellant Bank disposed of the appeal, filed by the respondent. As this date fell within the period, between January 8, 1964 and October 8, 1964, (during which I. D. No. 4 of 1964 was pending) the management was bound to comply with the proviso to s. 33(2)(b) of the Act. As this proviso had not been complied with, the Tribunal held that there was a contravention of the provisions of s. 33 of the Act, which gives a right to

the respondent to invoke the jurisdiction of the Tribunal, under s. 33A of the Act.

After having held that there is a contravention, of s. 33 of the Act, the Tribunal then considered the attack levelled, as against the domestic enquiry proceedings, by the respondent, and recorded a finding to the effect that it was not fair to consider that the, respondent had wilfully disobeyed the order of transfer, passed by the management.. The tribunal, therefore held, on both the findings, that the respondent should be reinstated, with continuity of service and back wages.

The same contentions, that were raised before the Industrial Tribunal, on behalf of the management, have been urged before us, by the appellants' learned counsel, Mr. Gokhale. Counsel urged that the respondent is not a 'workman' and, in any event, he is not a workman concerned with the dispute in I.D. No. 4 of 1964. Counsel further pointed out that even assuming that the findings of the Tribunal, recorded against the appellant, were correct, the application, under s. 33A, was not maintainable, inasmuch as there was no contravention, by the management, of any of the provisions of s, 33, 'of the Act. In this connection, counsel pointed out, that the order of dismissal, having been passed by the Managing Director, on November 12, 1963, long before January 8, 1964, the date when I.D. No. 4 of 1964, was referred, there was no obligation, on the part of the management, to ask for approval of the Tribunal, in respect of their action, or of paying one month's wages to the respondent. Counsel also urged that even if these questions were answered against the appellant, the award would have to be set aside, because the Industrial Tribunal had really constituted itself as a Court of appeal, when it set aside the order of dismissal, passed by the management, which was based on the findings recorded in a proper domestic enquiry. Mr. M. K. Ramamurthy, learned counsel, appearing for the respondent, has supported the views, expressed by the Tribunal, on all aspects.

If the contention of the appellant, that there was no Industrial dispute, pending at the time, when the order of dismissal was passed, is accepted, then, quite naturally, it follows that no question of contravention of s. 33, of the Act, arises, in which

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case, the complaint, under S. 33A, is not maintainable, in law. In an enquiry, under S. 33A, the first question that the Tribunal will have to consider, is regarding the contravention, by the employer, of the provisions of S. 33 of the Act. If this issue is answered against the employee, nothing further can be done, under S. 33A, of the Act. This position has been settled, by the decisions of this Court, in *Equitable Coal, Ltd. v. Algu Singh* (1) and *The Punjab National Bank Ltd. v. Its Workmen* (2). After hearing arguments, on this aspect, we are inclined, in the instant case, to accept the contention of the appellant, in this regard, and hence, no other questions arise, in the application filed, by the respondent under s.33A of the Act. There is no controversy, in this case, that the appellant did not seek the approval of the Industrial Tribunal concerned, nor did they offer or pay one month's wages to the respondent. There is also no controversy that I.D. No. 4 of 1964, can in law be considered to be pending only from January 8, 1964, to October 8, 1964. The order of the Managing Director, dismissing the respondent from service, was made on November 12, 1963, which date, admittedly, falls outside the duration of the pendency of I.D. No. 4 of 1964.

The order of the working committee of Directors, rejecting the respondent's appeal, which was passed on March 20, 1964, certainly falls within the period when I.D. No. 4 of 1964 was pending. Therefore, the question that arises for consideration, in this case, is as to when, it can be stated, that the respondent was dismissed, i.e., by the order of November 12, 1963, of the Managing Director, or by the appellate order of March 20, 1964, passed by the working committee of Directors. According to the appellant, the order which has to be taken into account, for considering whether there is a contravention of S. 33 of the Act, is the original order passed, by the Managing Director, on November 12, 1963, whereas, according to the respondent, the appellate order, passed on March 20, 1964, is the effective order, dismissing him.

The respondent's contention, in this regard, is briefly as follows. Under the National Industrial Tribunal (Bank Disputes) Award, 1962 (known as the Desai Award), a workman, in such cases, has got a right of appeal, to the appropriate authority, and he has got a period of 45 days, for filing the appeal. In this case, the order of the Managing Director, dated November 12, 1963, also states that respondent is entitled to file an appeal, against that order, to the working committee of the Directors, within 45 days of receipt of that order. The respondent, admittedly, filed an appeal, on December 17, 1963, well within the time. The appeal was disposed of, on March 20, 1964. The language of s. 33(2), counsel points out, is to the effect that the employer has

(1) [1958] I L.L.J. 793.

(2) [1960] 1 S.C.R. 806.

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been enabled to take action, 'in accordance with the standing orders applicable to a workman concerned, in such dispute'. Inasmuch as the standing orders, in this case, give a right to appeal, to the workman, any order that is passed, by the management, in respect of which a right of appeal is given to a workman, cannot be considered to be an effective or operative order, till the appellate decision is made known. It will be open to the appellant to take action, in accordance with the proviso to s. 33(2)(b), at the time when the appellate order was passed, on March 20, 1964, as the appellate order is the effective and binding order. So far as the parties are concerned, the order of dismissal, in this case, must be considered to have been passed only on March 20, 1964, which date squarely falls within the period, during which I.D. No. 4 of 1964, was pending. We are not inclined to accept the contentions of the learned counsel, for the respondent, in this regard.

It has been laid down by this Court, in *Strawboard Manufacturing Co. v. Govind*(1), in construing the proviso to s. 33(2)(b) of the Act, that the three things contemplated, viz., dismissal or discharge, payment of the wages and making of the application, should be part of the same transaction. Therefore, in our view, there must be a fixed and certain point of time which will be applicable to all managements and workmen, when construing the provisions of s. 33 of the Act. The management must definitely know, as to when they have to take the necessary action, under the proviso to s. 33(2)(b), and the workman also should, likewise, know the definite time when the management should have complied with the requirements of the proviso to s. 33(2)(b), so that he could approach the Industrial Tribunal, by way of a complaint, under s. 33A, of the Act. A reading of the material provisions of s. 33 shows that the

expressions used are 'discharge or punish, whether by dismissal or otherwise', and they clearly indicate, in our opinion, the point of time, when the order of discharge or dismissal is passed, by the authority concerned. An order of discharge or dismissal, in our opinion, can be passed, only once; and, in this case, the order of dismissal is the one passed, by the Managing Director, on November 12, 1963. No doubt, either by virtue of the Standing Orders, or by virtue of a contract, of service, a right of appeal may be given to a workman concerned, to challenge an order of dismissal. But the appellate authority only considers whether the order of dismissal has to be sustained, or whether it requires modification. Therefore, there is no question of the appellate authority passing, again, an order of dismissal. We are not concerned, in construing the provisions of s. 33, as to the finality of the orders passed, by the authority concerned, in the first instance, in passing orders of dismissal or discharge. Further, the proviso to s. 33(2)(b), when it, refers to payment of wages for one month, also indicates that it relates to an

(1) [1962] Supp. 3 S.C.R. 618, 630.

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order of discharge or dismissal, which comes into effect immediately, which, in this case, is the order passed, on November 12, 1963. The payment of one month's salary or wages, is to soften the rigour of unemployment that will face the workman, against whom an order of discharge or dismissal, has been passed. If the management has to wait for the minimum period prescribed for filing an appeal, and also await the termination of the appeal when one is filed, considerable time would have lapsed from the date of the original order, during which period the workman would not have received any salary. It will be anomalous to hold that even after the lapse of such a long time, the payment of one month's salary would satisfy the requirements of the section.

In this case, if the contention of the respondent is accepted, it will lead to very anomalous results, and the time when a management has to comply with the proviso to s. 33(2)(b), will radically differ. For example, according to the respondent, the management, in this case, will have to wait for the minimum period of 45 days, which is the time given for the respondent, to file an appeal. If an appeal is filed, according to the respondent, the management will have to wait further, and await the disposal of the appeal. That means, in such a case, the proviso will come into effect only at the time when the appeal is disposed of. On the other hand, if, after the expiry of 45 days, the workman concerned does not file an appeal, the management, according to the respondent, will have to comply with the proviso immediately after the period of limitation is over. That is, the point of time when the proviso to s. 33(2)(b) will have to be complied with, by the management, will depend upon the filing or non-filing of an appeal, by the workman concerned. Further, if at the time, when the original order of dismissal is passed, there is no dispute pending, and when the appeal against the order of dismissal is pending, a dispute is referred for adjudication, it will be open to the management to prolong its decision, in the appeal, till after the Industrial dispute 'has come to an end. It cannot be the intention of the Legislature that such variable and indeterminate periods are contemplated in construing the proviso to s. 33(2)(b). The natural and reasonable interpretation, to be placed on s. 33, is, in our opinion,

that the order of discharge or dismissal, is the original or the very first order passed by the management-, which in this case is the one passed. by the Managing Director, on November 12, 1963. It follows that on that date, I. D. No. 4 of 1964. had not even been referred,. for adjudication, which, as we 'have already indicated.

was by an order of Government, dated January 8, 1964. Hence there is no contravention of s. 33, in this case.

Before we close the discussion, it is necessary to state that Mr. Ramamurthy, learned counsel for the respondent, referred us to two decisions-of this Court. in The Management of Hotel Imperial V. Hotel Workers' Union (1) and Collector of Customs,

(1) [1960] 1 S.C.R. 476.

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Calcutta v. East India Commercial Co. Ltd.(1). In the first decision, this Court has recognised that a term should be implied, by Industrial Tribunals, in the contract of, employment, that, if the master has held a proper enquiry and come to the conclusion that the servant should be dismissed, and in consequence, suspends him, pending the permission, required under S. 33 of the Act, he has the power to order suspension, thus suspending the. contract of employment temporarily, so that there is no obligation on him' to pay wages, and no obligation on the servant, to work. In the second decision, this Court held that in cases where an authority reverses the order under appeal, or, modifies or merely dismisses the appeal and thus confirms the order appealed against without any modification, the operative order is the order of the appellate authority. :In our opinion, these decisions do not assist the respondent and the principles laid down. therein, have no bearing on the point to be determined in the instant case.

The result is that the award of the Industrial Tribunal is set aside and the application, filed by- the respondent before it, will stand dismissed. The appeal is, accordingly, allowed, but without costs.

Y.P. Appeal allowed.

(1) [1963] 2 S.C.R. 563, 568

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