



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 5023 of 2023

Vijay Krushnarao Pawar,
Aged about 51 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5017 of 2023

Moreswar Jangluji Ghaiwat,
Aged about 58 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5014 of 2023

Manohar Manilal Gour,
Aged about 63 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5005 of 2023

Vyasmuni Raghobar Prajapati,
Aged about 53 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5001 of 2023

Kashiram Ranjit Rajput,
Aged about 62 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5008 of 2023

Jiwant Kumar Sharan,
Aged about 67 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5002 of 2023

Deepak Shankarrao Labde,
Aged about 53 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5007 of 2023

Deepak Govind Rangari,
Aged about 56 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5009 of 2023

Ramesh Parasram Pethe,
Aged about 52 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5012 of 2023

Ishwar Premlal Salame,
Aged about 59 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5011 of 2023

Ravindra Bhagyanarayan Thakur,
Aged about 68 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5004 of 2023

Sanjay Yashwantrao Yeole (Patil),
Aged about 57 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5013 of 2023

Sunil Wasant Taley,
Aged about 63 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5006 of 2023

Naktu Kashiram Fulzele,
Aged about 65 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5018 of 2023

Niranjan Prabhakar Markandeyawar,
Aged about 56 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5016 of 2023

Pundlik Bhaurao Gaikwad,
Aged about 67 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5019 of 2023

Ramesh Babarao Mondhe,
Aged about 62 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5024 of 2023

Nilkanth Krushnaji Dongre,
Aged about 59 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5022 of 2023

Prakash Deorao Kanfade,
Aged about 54 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5020 of 2023

Chandrashekhar Kisanlal Mahule,
Aged about 50 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near Jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5015 of 2023

Dilip Annaji Ghaiwat,
Aged about 61 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5021 of 2023

Chandrakant Shamrao Dasarwar,
Aged about 56 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5003 of 2023

Bhaiyalal Brijmohan Rajput,
Aged about 49 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

with

Writ Petition No. 5010 of 2023

Pravin Diwakar Mendhi,
Aged about 56 years,
C/o Lokmat Shramik Sanghatana,
C/o Shri Pundlik Bhaurao Gaikwad,
Near jaymata School, Plot No. 49,
Sai Nagar, Dighori, Umred Road,
Ring Road Chowk, Nagpur-440 034.

... Petitioner

- Versus -

Lokmat Media Private Limited,
Lokmat Bhawan, Wardha Road,
Nagpur – 440012. Through its
Senior General Manager HR.

... Respondent

Shri S. D. Thakur, Advocate for the petitioners
Mr. M. G. Bhangde, Senior Advocate assisted by Mr. S. S. Sarda,
Advocate for the respondent

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 30-07-2024

Date of pronouncing judgment : 30-08-2024

COMMON JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. The petitioners (7 journalists and 17 non- journalists), who were working on the establishment of the respondent were on 21-11-2013 dismissed from service without charge-sheet and enquiry. At the relevant time, the industrial disputes were pending between the parties before the Industrial Tribunal at Nagpur and, therefore, the respondent – employer moved application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short ‘the Act of 1947’). The respondent examined 118 witnesses to substantiate order of dismissal against petitioners (24 in numbers). The petitioners had examined themselves in support of their objection to grant approval for dismissal.

3. On 7-4-2017, the respondent moved an application for permission to withdraw the application filed by it under Section 33(2)(b) of the Act of 1947. The petitioners opposed the application. On 17-4-2017, the Industrial Tribunal permitted respondent to withdraw the application. This was followed by petitioners filing

complaint under Section 33A of the Act of 1947, the Industrial Court granting reinstatement and in alternative payment of 75% monthly wages, challenge to this order by both the petitioners and respondent, request made by the respondent for revival/restoration application filed under Section 33(2)(b), rejection by Industrial Court of the request so made by the respondent etc.

4. The above issues travelled to this Court which was pleased to set aside the order passed by the Industrial Court directing reinstatement of the petitioners and in the alternative 75% monthly wages with further direction to decide the complaints under Section 33A of the Act of 1947 in accordance with law. So far as application seeking revival/restoration is concerned, this Court vide judgment dated 30-11-2018 in Writ Petition Nos. 4962/2018, 4971 to 4990 of 2018, set aside the order passed by the Industrial Court rejecting the request and thus, allowed the revival/restoration of the application, subject to costs of Rs. 25,000/- to be paid to each employee.

5. The petitioners challenged the said order before the Hon'ble Supreme Court but in vain. The petitioners then filed review application which came to be rejected on 5-5-2023. The Industrial Court thereafter dismissed the complaints filed under Section 33A by the petitioners on the ground that after revival/restoration of

application under Section 33(2)(b) of the Act of 1947, the complaints under Section 33A cannot be entertained.

6. The Industrial Court, thereafter, vide order dated 6-5-2023 allowed the applications filed by the respondent under Section 33(2)(b) of the Act of 1947 seeking approval of dismissal orders dated 21-11-2013. This order has been challenged by the petitioners.

7. Learned counsel for the petitioners submits that the judgment dated 30-11-2018 passed by this Court in Writ Petition No. 4962/2018 with connected petitions permitting the respondent to revive/restore application under Section 33(2)(b) for approval does not properly appreciate the law laid down by the Hon'ble Supreme Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and others [(2002) 2 SCC 244]***. That being so, according to learned counsel for the petitioners, the Industrial Court could not have given effect to the said judgment and, therefore, revival/ restoration of application is illegal. He then submits that even otherwise, the Industrial Court failed to consider the aspect of prejudice caused to the petitioners by revival/restoration of the said application, as directed by this Court in the above judgment.

8. Mr. M. G. Bhangde learned Senior Counsel has countered and rightly so, that the judgment dated 30-11-2018 passed by this Court is not open for any criticism in as much as the judgment has now attained finality. The attempt of petitioners to challenge the same before the Hon'ble Supreme Court has failed. Further attempt to seek review of the said order has also failed. The judgment has thus attained finality. It is binding on all and, therefore, the petitioners cannot re-agitate the issue. On this point, the Supreme Court in the case of ***Malthesh Gudda Pooja Vs. State of Karnataka and others [(2011) 15 SCC 330]*** has held in paragraph no. 25 that even a wrong decision between the parties which has attained finality is binding and cannot be re-agitated or re-opened at a later stage. The argument of petitioners on this count is thus oblivious to the concept of finality of a judgment.

9. On the point of prejudice, it will be appropriate to first lay hands on the judgment of Hon'ble Supreme Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.***'s case. The Constitution Bench was required to answer the following question.

"If the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947, whether the order of dismissal becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make application under Section

33(2)(b) would not render the order of dismissal inoperative?"

The Supreme Court, while answering the question, has held as under :

"13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should

advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

14. *Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done*

by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of the statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33-A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

15. *The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or*

inoperative unless such an order is set aside under Section 33-A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33-A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33-A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment.”

10. Thus, the Supreme Court has held that proviso to Section 33(2)(b) is mandatory. The Court then proceeds to note that if approval is not given, the employee will be deemed to have continued

in service entitling him to all the benefits available and, there is no need of a separate or specific order for his reinstatement. The Supreme Court has also held that not making application under Section 33(2)(b) or withdrawing an application once made is a clear case of contravention of the proviso to Section 33(2)(b).

11. In such an eventuality, the employee will naturally be deemed to have continued in service entitling him to all the benefits available. The question, however, is if the application so withdrawn, is allowed to be revived/restored, whether the employee would still be deemed to have continued in service. The answer in normal course ought to be in the negative because once the application seeking approval for dismissal order is restored, it will relate back to the date on which it was filed.

12. At the same time, in the present case, the issue of prejudice has a different dimensions in the sense what would be the effect of withdrawal on employment and if employee stood reinstated, can his service be treated as terminated upon revival of application, will the employee be entitled for wages in the intervening period etc. will have to be considered. On this point, learned counsel for the petitioners has invited my attention to Section 33 of the Act of 1947 which reads thus :

“33. [Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. - (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-

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

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

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

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month

and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3).....

(4).....

(5).....”

13. Learned counsel for the petitioners submits that proviso to clause (b) of sub-section (2) of Section 33 provides that no workman shall be dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by him. Thus, according to him, the dismissal of an employee, payment of wages and making an application for approval should be simultaneous and should be part of same transaction, then only can employer pursue action under Section 33(2) of the Act of 1947. In support, he has placed reliance upon the judgment of Hon'ble Supreme Court in the case of ***P. H. Kalyani Vs. M/s. Air France, Calcutta [AIR 1963 SC 1756]***.

14. He then submits that having withdrawn application on 17-4-2017, one out of the three essential ingredients got detached and, therefore, the day on which the application was withdrawn, the petitioners stood continued in service, entitling them of all the benefits

available. The revival/restoration of application thereafter will amount to change in service conditions and is not permissible.

15. In my view, the argument involves an important issue and would require consideration but the stage has not yet reached for this Court to delve upon it. What has happened in the present case is that after the application under Section 33(2)(b) was restored, the Industrial Court has considered the same in the light of the evidence led before it and granted approval. While doing so, the Industrial Court has rendered a finding on the issue of prejudice as well. The Court noted that the application was withdrawn on 17-4-2017, the petitioners, however, failed to join duties, rather they did not report on duty. They come up with a case for the first time through written notes of argument that the petitioners made an attempt to join duties on at least four occasions but were not allowed to join the duties. The Court noted that no evidence in this regard was tendered. The Court accordingly refused to accept the contentions of the petitioners that efforts were so made, not only on the ground that no evidence was tendered in support but also on the ground that the petitioners had not filed grievance under Section 48 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 for the alleged refusal by the management to allow the petitioners to resume their duties.

16. The Industrial Court then proceeds to note that, had the petitioners resumed their duties, the issue of prejudice could have been pressed in service since they would have been then asked to discontinue work after revival/restoration of application. The Court accordingly observed that there was no material on record to show that the petitioners were deprived of anything and accordingly held that no prejudice has been caused to them because of revival/restoration of the application.

17. Learned counsel for the petitioners, however, failed to show that finding on failure to resume duty is contrary to the evidence led before the Industrial Court. The learned counsel could not point out any evidence to show that the petitioners herein had made any attempt to resume the duties.

18. Nonetheless, the issue is not closed yet. The petitioners are at liberty to pursue this point before the Industrial Court in the proceedings under Section 33A of the Act of 1947. It is so because the Supreme Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*** held that if approval is given by the authority and if the employee is aggrieved by such approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on the grounds available to him. Therefore, the real test/question is whether by

withdrawal of application, an indefeasible right has accrued in favour of the petitioners to get reinstated with all other benefits and further by its revival/restoration, the conditions of service of the petitioners have changed during pendency of the proceedings. If yes, what are the consequences. This issue can only be determined in the proceeding under Section 33A of the Act of 1947. Therefore, I have said earlier that the important issue is involved but the stage has not reached for this Court to devle upon it.

19. Mr. Bhangde, learned Senior Counsel submits that in the enquiry under Section 33A, the employee would not succeed in obtaining the order of reinstatement merely by proving contravention of Section 33 by the employer because it will be open to the employer to justify the impugned dismissal on merits as well. In support, he has placed reliance on the judgment of Hon'ble Supreme Court in the case of *Rajasthan State Road Transport Corporation and another Vs. Satya Prakash [(2013) 9 SCC 232]*, wherein the law on this point has been explained thus :

“18. Having noted this, what is observed by this Court in paragraph 14 of the judgment is relevant for our purpose. The relevant part of this paragraph reads as follows: (Ram Gopal Sharma Case, SCC p. 253, para 14)

“14. Where an application is made under Section 33(2)(b) proviso, the authority before which the

proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. *The order of dismissal or discharge passed invoking Section 33(2) (b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval*” (emphasis supplied)

The same paragraph lays down that if a workman is aggrieved by the approval, his remedy is to file a complaint under Section 33-A of the Act. This section has a definite purpose to serve viz. to provide a direct access to the Tribunal and thereby a speedy relief, instead of seeking the time consuming procedure of seeking a reference under Section 10 of the Act. In that complaint, however, the employee will succeed only if he establishes that the misconduct is not proved and not otherwise, and if he does succeed in so establishing, it will relate back to the date on which the dismissal order was passed by the employer as if it was inoperative. This remedy is independent of the penal consequences which the employer may have to face under Section 31(1) of the Act if prosecuted for the breach of Section 33.

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21. Thereafter while dealing with the scope of Section 33-A, the court surveyed the judgments then holding the field, and held at the end of para 33 in the following words: (Punjab National Bank Ltd. Case, AIR p. 172, para 33)

“33. Thus there can be no doubt that in an enquiry under S. 33-A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 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 33-A. *Therefore, we cannot accede to the argument that the enquiry under Section 33-A 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.*” (emphasis supplied)

20. As could be seen, once approval to dismissal order is granted in terms of Section 33(2)(b), the remedy available to the employee is to file complaint under Section 33A and in that complaint, the employee will succeed only if he establishes that the misconduct is not proved and once the employee succeeds in proving the contravention, it will be still open to the employer to justify the dismissal order on merit. This judgment, however, can not be taken aid of to contend that no prejudice will be caused if application filed under

Section 33(2)(b) is withdrawn and is revived at a later stage, in the sense one cannot argue that employee will have to first establish that the misconduct is not proved and further that employer may then justify the dismissal order on merit. This defence is available to the employer once the approval to dismissal is granted and if complaint under Section 33A is filed by the employee and not prior thereto.

21. Learned counsel for the petitioners submits that the judgment in the case of ***Rajasthan State Road Transport Corporation*** does not lay down correct position of law because the Supreme Court has failed to apply the law laid down by the Constitution Bench in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*** He has invited my attention to paragraph 18 of ***Rajasthan State Road Transport Corporation*** judgment, where the Court referred to paragraph no. 14 of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*** and held that if a workman is aggrieved by the approval, his remedy is to file a complaint under Section 33A of the Act of 1947. The Supreme Court then held that in the said complaint, the employee will succeed only, if he establishes that misconduct is not proved or not otherwise.

22. According to the learned counsel for the petitioner, this conclusion is contrary to the law laid down by the Constitution Bench in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.***

23. I find this argument to be not only strange but contemptuous. The Supreme Court, has in the ***Rajasthan State Road Transport Corporation***, by referring to the ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.***, held that in the complaint filed under Section 33A, the employee will succeed only if he establishes that misconduct is not proved and not otherwise. Needless to say that this pronouncement is binding on all and is not open for re-agitation. In fact similar such view was taken by the Supreme Court in the case of ***Punjab National Bank Ltd. Vs. All India Punjab National Bank Employees' Federation [AIR1960 SC 160]*** which was also referred to by the Supreme Court in the case of ***Rajasthan State Road Transport Corporation***.

24. In the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.***, the Constitution Bench has in clear terms held that if the approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. The Court further held that consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available and there is no need of separate or specific order for his reinstatement. The Court then has clarified that it is only if the approval is given by the authority, the employee if aggrieved of such

approval is entitled to make a complaint under Section 33A of the Act of 1947.

25. Thus, the Constitution Bench has held that if the approval is not given, there would not arise any cause to file complaint under Section 33A because the employee stands reinstated automatically. It is only when the approval is granted, the complaint under Section 33A would lie. The Supreme Court in the case of *Rajasthan State Road Transport Corporation*, taking stock of various pronouncements, has held that in an enquiry under Section 33A, the employee will succeed only, if he establishes that the misconduct is not proved and not otherwise and further it will be open to the employer to justify the impugned dismissal on the merits.

26. In the present case, the approval having been granted by the authority below, the petitioners ought to have challenged the same under Section 33A in terms of the settled position of law as discussed above. In the said proceedings, the petitioners would get opportunity to prove contravention of Section 33 by the employer which would include the withdrawal of application and revival thereof and if such contravention or any other contravention in terms of Section 33 is proved, it will be open to the respondent to justify the order of dismissal on merits, considering the facts of the case.

27. As regards facts, the petitioners carry a blame that they were absent on duty on 13th and 14th November, 2013 and on those days at about 9.00 a.m. to 11.00 a.m., they assembled at the company gate and shouted slogans and hurled abuses on the management, obstructed the workers, who were willing to report on duties. The Industrial Court, after assessing evidence, has held that the charges have been proved against the petitioners and thus, the petitioners were found guilty of committing misconduct, having staged protest in the precinct of the work place. On the point of conducting disciplinary enquiry, the Industrial Court opined that the petitioners acts was such that it was virtually a call for mutiny against the employer and in such reign of terror, one would not expect the employer to conduct long drawn disciplinary enquiry when its core business activity of publication of newspaper was sought to be paralysed by the petitioners. The Court further noted that the case under question was not a call of strike given by the union members and even if, they had decided to abstain themselves from the work, they were free to impose such decision on themselves but could not have obstructed or intimidated or abducted or wrongfully confined the other employees, who were willing to work. Accordingly, the Industrial Court noted that the petitioners *prima facie* have indulged in unfair labour practice under Item 2(a) and 2(b) and Item-8 of part-II of the Fifth Schedule of the Industrial Disputes Act.

28. The Court accordingly held that the respondent – employer was forced to take a call of dismissal for loss of confidence. This finding is based on the evidence led before the Industrial Court and appears to be in tune with the evidence. However, it will be appropriate to leave the final verdict on this point in the proceedings under Section 33A of the Act of 1947.

29. The petitioners have unnecessarily reached to this Court despite efficacious remedy available to them. The petitions are thus not maintainable. The petitioners are, however, at liberty to approach the Industrial Court in terms of Section 33A of the Industrial Disputes Act, 1947, which if filed, shall be considered by the Industrial Court on its own merit. All questions are kept open. Rule stands discharged with no order as to costs.

(Anil L. Pansare, J.)

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