

(1996) 10 GAU CK 0003

Gauhati High Court

Case No: Civil Rule No. 4664 of 1991

The Management of Naharhabi
Tea Estate

APPELLANT

Vs

Presiding Officer Labour Court
and Another

RESPONDENT

Date of Decision: Oct. 4, 1996

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33, 33A

Citation: (1997) 3 GLR 3

Hon'ble Judges: J.N. Sharma, J

Bench: Single Bench

Advocate: C. Barua and P.J. Saikia, for the Appellant; P. Prasad and A. Bhattacharjee, for the Respondent

Final Decision: Allowed

Judgement

J.N. Sarma, J.

This writ application has been filed challenging the legality and validity of the order dated 24.10.91 passed by the Presiding Officer, Labour Court at Dibrugarh in Case No. 2/88 u/s 33A of the Industrial Disputes Act, granting interim relief of payment of salary,

2. I have heard Shri C. Barua, learned Advocate for the Petitioner and as none appears for the Workmen, Respondent No. 2. I requested Smti. Abha Bhattacharya to appear amicus curiae and she has appeared in the matter.

3. The Petitioner, herein, is the Management. The case of the Petitioner is that some workmen are employed on permanent basis and some are appointed purely on casual basis on daily wages with no obligation to appoint them as and when the particular job is finished. Accordingly 34 persons, named, in Paragraph-3, were appointed during plucking season only and they were given job on daily basis and

on daily payment. All of them were engaged for a period less than 2 months. Their names were not entered on the Work-Register for permanent workmen. On 12.5.88 an application was filed by these 34 persons represented by the Secretary, Sadou Asom Chha Sramik Sangha u/s 33A of the Industrial Disputes Act before the Labour Court of Assam at Dibrugarh stating amongst others, that during pendency of Misc. Case No. 15/87 before the Labour Court, the Management had stopped the work of the aforesaid 34 persons and from 16.1.88 without written permission from the Court and therefore, the claimants are entitled to wages and compensation on and from 16.1.88. On the basis of this application a case was registered as Misc. Case No. 2/88. The Management filed the Written Objection and it was denied that the Claimants are continuously in the Garden since 1984 as claimed and that they are permanent workers. It was asserted that the persons mentioned are casual workmen being used only in the plaucking season. Thereafter on 24.10.91 the impugned order was passed which is Annexure-D to the Writ Application. The operative portion of the order reads as follows:

"So the Management will pay the interim relief at the rate of 50% of the last pay drawn by each workman as interim relief before the next date, failing which the same shall be subjected to be realised as arrear of land revenue." Hence this writ application.

4. The following points are urged by Shri C. Barua:

(i) Where the court is considering the complaint u/s 33A of the Act, it has to be finally decided whether an employee should be re-instated or not. It is not open to the Court to order reinstatement or to pay wages as an interim relief.

(ii) The order dated 24/10/91 is without jurisdiction.

(iii) There was no material to show that the management violated Section 33 of the Act and as such the impugned order could not have been passed.

5. The object of Section 33 is to protect the workmen concerned in dispute which is formerly subject matter of pending proceeding against the victimisation by the employer on account of their having raised industrial dispute or there continuing the pending proceedings. Further the object of the Section is to ensure that proceedings in connection with Industrial dispute already pending should brought to a termination in a peaceful atmosphere and that no employer should during the pendency of this proceedings take any action of the kind mentioned in the Section which may give rise to fresh disputes likely to further exacerbate, the already strained relation between the Employer and the workmen. (See [The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others](#), To achieve this objective a ban subject to certain conditions has been imposed by Section 33 on the ordinary right of the Employer to alter the terms of the Employee's services to their prejudice, or to terminate their services under the general law governing the contract of employment and Section 33A provides for relief against the contravention of Section

33, by way of adjudication of the complaints by aggrieved workmen considering them to be disputes referred or pending in accordance with the provisions of the Act. This band, however, is designed to restrict interference with their rights and liabilities of the parties under the ordinary law within the limitation truly necessary for accomplishing the above objective. The Employer is accordingly free to deal with the employees when the action concerned is not punitive or mala fide or does not amount to victimisation or unfair labour practice. The necessity of the Legislature to effectively achieve the object of duly protecting the workmen against the victimisation or unfair labour practices consistently with the preservation of the Employers' bona fide rights to maintain discipline efficiency in the Industry for securing the maximum production in a peaceful, harmonious atmosphere is obvious from the over-all scheme of the relevant cognate Section (See [Air-India Corporation, Bombay Vs. V.A. Rebellow and Another](#),

6. It is note-worthy that the ban is imposed only in regard to action taken for misconduct whether connected or unconnected with the dispute. The Employer is, therefore, free to take action against his workmen if it is not based any misconduct on their part. Termination simplicitor or automatic termination of service under the terms of service or under the Standing Order is outside the scope of this Section.

7. Regarding the power of the Court to pass interim order the matter was considered by the Apex Court in [Delhi Cloth and General Mills Co. Ltd. Vs. Shri Rameshwar Dyal and Another](#), wherein the Apex Court pointed out as follows :

Apart from the question whether the tribunal had jurisdiction to pass an interim order like this without making an interim award (a point which was considered and left open by this Court in the Management of Hotel Imperial v. Hotel Workers union), we are of the opinion that where the tribunal is dealing with an application u/s 33-A of the Act and the question before it is whether an order of dismissal is against the provisions of Section 33 it would be wrong in Law for the Tribunal to grant reinstatement or full wages in case the employer did not take the workman back into service as an interim measure. It is clear that in case of a complaint u/s 33-A based on dismissal against the provisions of Section 33, the final order which the tribunal can pass in case, it is in favour of the workman, would be for reinstatement. That final order would be passed only if the employer fails to justify the dismissal before the tribunal either by showing that proper domestic inquiry was held which established the misconduct or in case no domestic inquiry was held by producing evidence before the tribunal to justify the dismissal: See Punjab National Bank-Ltd. v. All-India Punjab National Bank Employees' Federation, where it was held that in an inquiry u/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 to be treated as an

industrial dispute and all the relevant aspect of the said dispute fall to be considered u/s 33-A and it has finally to decide whether an employee should be reinstated or not, it is not open to the tribunal to order reinstatement as an interim relief, for that would be giving the workman the very relief which he could get only if on a trial of the complaint, the employer failed to justify the order of dismissal. The interim relief ordered in this case was that the workman should be permitted to work in other words he was ordered to be reinstated, in the alternative it was ordered that if the management did not take him back they should pay him his full wages. We are of the opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the Respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings u/s 33. As was pointed out in Hotel Imperials case, ordinarily interim relief should not be the whole relief that the workmen would get if they succeeded finally.

8. This matter was considered also by the Allahabad High Court and in [Jaswant Sugar Mills Co. Limited Vs. Labour Court and Others](#), in the Case of Jashowant Sugar Mills Company Limited v. Labour Court Meerut and Ors. a Single Judge of the Allahabad High Court pointed out that a labour Court can not award payment of money to a party in dispute. It was further pointed out that a Labour Court also does not have any inherent power as are vested in civil Courts. It entrusts the power of Civil Court for the limited purposes, Labour Court can not pass any order which it deems fit in the interest of justice including an order before judgment or an interim injunction.

9. This being the position of law, the impugned order dated 10.4.91 is absolutely without jurisdiction and the same is quashed and the Rule is made absolute. The matter now shall go back to the Labour Court to decide the dispute in accordance with law. The Writ petition is allowed.