(2017) 16 SCC 540

SUPREME COURT OF INDIA

Case No: C.A. No 9956 of 2017 (Arising out of SLP Â© No 19530 of 2016)

Managing Director, NEKRTC Karnataka		APPELLANT
	Vs	
Shivasharanappa		RESPONDENT

Date of Decision: Aug. 1, 2017

Acts Referred:

- Industrial Disputes Act, 1947, Section 33A, Section 33(2)(b) - Special provision for adjudication as to whether conditions of service, etc.,changed during pendency of proceedings - Conditions of service, etc., to remain unchanged under certain circum- stances during pendency of proceedings

Citation: (2017) 16 SCC 540

Hon'ble Judges: Ranjan Gogoi, J; L. Nageswara Rao, J; Navin Sinha, J

Bench: Full Bench

Final Decision: Allowed

Judgement

1. Leave granted.

2. The respondent - workman was subjected to a domestic enquiry by the employer - North Eastern Karnataka Road Transport Corporation (NEKRTC) on a charge of obtaining employment by furnishing fabricated qualification documents and by making a false declaration. The finding of the domestic enquiry was adverse to the respondent - workman. Before the Labour Court an issue was raised with regard to the validity of the proceedings of the domestic enquiry to which the Management countered by making a request to lead evidence to prove the charge on merits. Accordingly, leave was granted. The Labour Court by order dated 25th May, 2011 in paragraph 34 thereof held as follows:

"34. The question arises whether the order of dismissal is proportionate the legal misconduct. It is proved from the evidence that the first party has obtained employment by producing the fabricated documents. This act on the part of the first party is grave misconduct. Such misconduct or misdeed cannot be ignored. Under such circumstances the order of dismissal is proportionate to proved charges. I do not find any circumstances to say that the order of dismissal is disproportionate to proved charges. Therefore, I answer these issues in favour of the second party respondent."

3. The respondent - workman moved the High Court against the aforesaid order of the Labour Court. A learned single judge of the High Court by order dated 23rd July, 2013 took the view that as another proceeding under the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") was pending, prior approval under Section 33(2)(b) of the Act was required to be taken by the employer. Such prior approval was however neither sought for nor granted. The dismissal of the workman was, therefore, held to be void ab initio. The said order of the learned single judge of the High Court has been affirmed in the writ appeal. Aggrieved, the employer has instituted the present appeal under Article 136 of the Constitution of India.

4. Is the High Court correct in taking the view as noticed above? In Management of Karur Vysya Bank Ltd. v. S. Balakrishnan, (2016) 12 SCC 221 while dealing with a situation of absence of any approval under Section 33 (2) (b) of the Act read with Section 33A thereof, this Court had taken the view that a finding on the question as to whether the employer has contravened the provisions of Section 33 (2) (b) would not be conclusive of the matter and "the industrial adjudicator is required to answer the further question as to whether the dismissal or such other punishment as may have been imposed on the workman is justified in law".

This Court also noticed a similar view taken in Rajasthan State Road Transport Corporation & Anr. v. Satya Prakash, 2013(3) S.C.T. 455 : (2013) 9 SCC 232. Additionally in paragraph 13 of the Report in Management of Karur Vysya Bank Ltd. (supra) this Court had an occasion to notice the perceived dichotomy between the provisions contained in Section 33 (2) (b) and Section 33A of the Act and attempted resolutions thereof by the legislature. The aforesaid paragraph 13 may be noticed in detail by extracting the same:

"13. The second issue that we had occasion to deal with in the course of the debates that had taken place on the issues/ questions arising in the present case is with regard to what we perceive is a 15 dichotomy between the provisions contained in Section 33(2)(b) and Section 33A of the Act. In this regard, we take notice of the fact that the employer who does not carry out his/its statutory obligation under Section 33(2)(b) and yet prevents the workman from working and earning his wages virtually gets the benefit of an

adjudication that the workman has been compelled to undertake in default of the statutory obligation on the part of the employer. The jurisdiction under Section 33(2)(b) is bound to be and in fact is narrower than the reference jurisdiction under Section 33A. It is common experience that litigations including industrial references in this country have the tendency to remain pending beyond necessary and acceptable limits. In such a situation, can the workman be made to suffer by being made to stay away from work 16 despite the lapse on the part of the Management in moving the Industrial Adjudicator for approval under Section 33(2)(b) of the Act. In other words, does he have to await the outcome of his complaint under Section 33A which itself is to be treated as a reference under Section 10. The power of the Industrial Court to pass interim orders is hardly an answer Our anxiety in this regard is aggravated by the fact that the present position in law is proposed to be extended in the proposed Labour Code on Industrial Relations Bill, 2015 which contemplates "revision of the existing labour law". We, therefore, had thought it proper to request either the learned Attorney General for India or the learned Solicitor General of India to appear before the Court and to assist us on the issue. The Court acknowledges the assistance rendered by both the learned Attorney General for India and the Solicitor General of India who have appeared in Court. The learned Attorney General for India has assured the Court that the matter will receive the attention of the highest authorities of the State. We, therefore, leave the matter to the wise decision of the Executive and Legislative arm of the State and end the issue on the above note."

5. In the present case, the High Court interfered with the punishment merely on the ground that the requirement under Section 33(2)(b) of the Act had not been complied with and prior approval had not been taken. The same, as already held by this Court, could not have authorized the High Court to interfere with the punishment imposed without an adjudication on the validity of the dismissal. In the present case, such an adjudication had already been made and, therefore, the issue of the validity of the dismissal of the workman must be understood to have been gone into and decided. In such a situation, the High Court ought not to have interfered with the punishment imposed without considering the findings of the Labour Court on the correctness of the charges brought against the workman. The said aspect of the order of the High Court has, however, not been assailed by the workman. The aforesaid part of the order may, therefore, be understood to have been accepted by the workman. In the above situation, the remaining part of the order i.e. the High Court interfering with the punishment imposed would clearly be contrary to the view expressed by this Court on the issue in Management of Karur Vysya Bank Ltd. (supra).

6. We, therefore, arrive at the conclusion that the High Court was not at all justified in passing the impugned order which is one of reinstatement with partial back-wages (25%). We accordingly interfere with the order of the High Court and restore the order of the Labour Court dated 25th May, 2011.

7. The appeal consequently is allowed in the above terms.