REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4560 OF 2008

Rajasthan State Road Transport Corporation and Another ... Appellant (s)

Versus

Satya Prakash ... Respondent (s)

J U D G M E N T

H.L. Gokhale J.

This appeal seeks to challenge the judgment and order dated 21.10.2005 rendered by a Division Bench of the Rajasthan High Court in D.B. Special Appeal (Writ) No.1093 of 2005, dismissing the appeal filed by the appellants against the judgment and order dated 19th July, 2005, rendered by a learned Single Judge of that High Court in Civil Writ Petition No.3933 of 2009, by which judgment the award dated

3.12.2002 rendered by the Industrial Tribunal, Jaipur in Case No. I.T. No.41 of 1994 was upheld.

2. Mr. Puneet Jain, learned counsel has appeared in support of this appeal and Mr. Shovan Mishra, learned counsel for the respondent.

The facts leading to this appeal are as follows:-

3. The respondent was working as a bus conductor on daily wages under the appellant-Rajasthan State Road Transport Corporation ("S.T. Corporation" for short) from 8th May, 1987 with a daily wage of Rs.20/- per day. His appointment was for a period of three months only though it appears that it was continued for a little while more. It was alleged that during this short period also there were instances of his misbehaviour with the staff, of using abusive language, and coming to office in drunken state. An F.I.R. was also lodged against him. It so transpired that when he was on duty on 10th October, 1987, on the route from Sirohi to Jodhpur, his bus was checked by a flying squad led by the Judicial Magistrate, Transport. It was found that there were 20 passengers traveling in that bus. The respondent had

collected the fare from all of them. However, three and half tickets were found to have been issued less. In view thereof a Departmental enquiry was conducted against him. The respondent did not appear therein despite notices. Appellant led the necessary evidence, and the inquiry officer held that the charge was proved. The respondent was, therefore, directed to be dismissed from service by the order passed by the Divisional Manager, Jodhpur with effect from 20th November, 1987.

4. The respondent felt aggrieved by his dismissal and filed a Civil Suit before the Additional Civil Judge, Junior Division, Jaipur City being Civil Suit No.1572 of 1989. The first issue raised in that suit was whether the termination of the respondent was liable to be set aside for being bad in law for being and against the principles of natural justice. The Court noted that the respondent was issued notices to remain present in inquiry, first on 27.10.1987, and on 6.11.1987, but he chose not to remain present. The Court, therefore, held that it becomes clear that the respondent was given sufficient opportunity of being heard, but he himself did not remain

present before the competent authority, and the inquiry officer had no other option except to proceed ex-parte. The Civil Court also noted that the respondent had accepted the fact in his statement that when the bus was checked on 10.10.1987, the flying squad had made necessary remark on the way-bill but he had refused to sign it. The Court observed that this conduct of the respondent proved that he did not want the truth of the incident to be brought on record. The Civil Court, therefore, decided the first issue in favour of the appellants. The second issue raised was with respect to the jurisdiction of the Civil Court. The appellant had contended in their written statement that since the concerned dispute was an industrial dispute, the Civil Suit was not maintainable. The issue was however not decided on that count. It was decided in favour of the appellants on another basis viz. that the Civil Court in Jaipur did not have the jurisdiction for the reason that the cause of action had arisen in Jodhpur since the order of the Divisional Manager was passed in Jodhpur. The suit, therefore, came to be dismissed by its judgment and order dated 24.11.1994.

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5. At that time, another industrial dispute concerning the workmen of the appellant-S.T. Corporation was pending determination before the Labour Court/Tribunal being I.T. No.92 of 1986 concerning the demands of the workman. The respondent, therefore, filed a Complaint before the Industrial Tribunal of Rajasthan at Jaipur under Section 33A of the Industrial Disputes Act, 1947 ("I.D. Act" for short) which was numbered as case No. I.T. No.41 of 1994. The respondent however did not disclose that he had filed a civil suit earlier which had come to be dismissed. The respondent took the plea that the appellant was expected to apply for approval of its action to the Tribunal/Labour Court concerned under Section 33 (2) (b) of the I.D. Act. The appellant had not done that, and therefore the termination of his services was bad in law.

6. (i) The learned Tribunal, which heard the Complaint, held that the S.T. Corporation had not held a departmental inquiry as contemplated under the standing orders. This was despite the evidence of the appellant in the Tribunal that the respondent did not remain present in the inquiry although

notices of personal hearing were served on him. The Appellant was however given the opportunity to prove the misconduct in the Tribunal. The appellant filed the affidavit of the officers concerned and they were cross-examined. The respondent also produced his affidavit and was cross-examined. The Tribunal examined the material on record. It noted that the corporation witness Purshottam Das Purohit, a member of the checking squad stated that there were 20 passengers in the bus out of whom 3½ passengers were found to be without tickets. The respondent had already collected the amount of fare for all of them. Accordingly, Mr. Purohit had recorded his remarks on the way-bill. Signatures of two witnesses and also of the bus driver were taken thereon. He further stated that the respondent had refused to sign on the way-bill. The statement of one of the passengers without ticket viz. one Bhanwar Lal Goyal was recorded and his signature was taken. The statements of the 3½ passengers were also recorded at the site.

(ii) In paragraph 9 the Tribunal referred to the affidavit of the respondent. He accepted that he had no enmity with the

inspecting team. He accepted that inspection of the bus had been done on that date. He however, denied that 3½ tickets were not issued. The Tribunal however, noted that he did not produce any specific evidence to prove his statement. Therefore, at the end of paragraph 9 of the award the Tribunal concluded in the following words:-

> *"Therefore from the evidence of the Corporation the charge of carrying 3 ½ passengers without ticket by the Applicant during the course of the inspection is certainly proved and from whom he had already recovered the fare amount."*

7. Thus as seen from above, the Tribunal in terms held in paragraph 9 of its judgment that the charge of not issuing three and a half tickets, despite receiving the fare, was certainly proved. The Tribunal however held that the fact remained that at the same time the provisions of Section 33 (2) (b) of the Act had not been complied with, which had led to the filing of the Complaint. Therefore, by its award dated 3.12.2012, it directed reinstatement of the respondent though without backwages but with continuity of service. This was after referring to the law laid down by a Constitution Bench of this Court in **Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd.**

vs. Ram Gopal Sharma reported in **2002 (2) SCC 244**, that non compliance with Section 33 (2) (b) will make the termination inoperative. This order has been left undisturbed by a learned Single Judge of the High Court, as well as by the Division Bench. Hence, this appeal. At this stage, we may note that neither in the Tribunal nor before the High Court did the appellant raise any submission based on the earlier decision of the Civil Court.

Submissions of the rival parties and their consideration:-

8. (i) The appellant is aggrieved by the relief granted to the respondent on account of the breach of Section 33 (2) (b) of the I.D. Act, since the Tribunal had otherwise held that the misconduct had been proved. Learned counsel for the appellant Mr. Puneet Jain, drew our attention to the judgment of this Court in the case of **The Bhavnagar Municipality vs. Alibhai Karimbhai and Ors.,** reported in **1977 (2) SCC 350**, wherein this Court has held in paragraph 15 that when a Complaint under Section 33A is filed, after finding out whether there is a breach of the provision of Section 33, the Labour

Court or Tribunal is supposed to treat the Complaint under Section 33A in the same manner as in the case of a Reference under Section 10 of the Act. In the present matter also both the parties were allowed to lead evidence on the merits of the controversy before the Tribunal, and then the finding was arrived at as in a Reference. The submission is that thereafter the workman cannot be allowed to raise the plea of the initial breach of Section 33 (2) (b) of the Act.

(ii) Alternatively, it is submitted that it is essentially a case of technical breach of Section 33, and in another judgment in the case of **United Bank of India vs. Sidhartha Chakraborty**, reported in **2007 (7) SCC 670**, this Court has granted liberty to the employer in the event of such a breach to take action in terms of Section 33 (2) (b) of the Act. Therefore, it is submitted that if the initial failure to apply for approval is yet to be held against the appellant, such a liberty be granted to the appellant in the present case also.

9. Learned counsel for the respondent Mr. Mishra, on the other hand submits that the fact remains that in the instant case the appellant had not complied with Section 33

(2) (b) of the Act and, therefore, the consequence has to follow, and that is the view taken by the Industrial Tribunal, which has been confirmed by the learned Single Judge as well as the Division Bench of the High Court, and that this Court should not interfere therewith. He submits that in case if any liberty is given to the appellant to apply under Section 33 (2) (b) at this stage, the respondent be also given opportunity to defend.

10. We have noted the submissions of both the counsel. In the instant case, the Tribunal while deciding the Complaint has gone into the merits of the case as in a Reference, given full opportunity to the parties, and then held in paragraphs 8 and 9 of its award dated 3.12.2002 that the charge of not issuing three and a half tickets, despite collecting the fare, was proved. This finding is not disturbed by the High Court. The Civil Court has also given the same finding by its earlier judgment and order dated 24.11.1994, which is not challenged by the respondent. Both these proceedings were initiated by the respondent/workman and resulted into a decision against him on merit. The decision of the Civil Court

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was however not placed before the Industrial Tribunal either by the respondent or by the appellant. The question which arises for our consideration on this background is as to whether the Tribunal was right in awarding reinstatement with continuity of service in the proceeding under Section 33A of the Act which arose out of the initial breach of Section 33 (2) (b) of the Act by the respondent.

11. In this behalf, we must note that in Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd. (supra), the Constitution Bench was concerned with the interpretation of Section 33 (2) (b) of the Act in the context of a Reference arising out of conflicting judgments thereon. Two Benches of this Court consisting of three learned Judges in (1) **Strawboard mfg. Co. vs. Govind (**reported in **AIR 1962 SC 1500)** and (2) **Tata Iron & Steel Co. Ltd. vs. S.N. Modak (**reported in **AIR 1966 SC 380)** had taken the view that if the approval is not granted under Section 33 (2) (b) of the Act, the order of dismissal becomes ineffective from the date it was passed. Another Bench of three learned Judges in **Punjab Beverages (P) Ltd. vs. Suresh Chand [**reported in **1978 (2) SCC 144]**

had expressed a contrary view. The question referred for consideration of the Constitution Bench was as follows:-

> *"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.?"*

12. While considering the issue, the Court noted in paragraph 6 of the judgment that the object behind enacting Section 33 as it stood prior to its amendment in 1956, was to allow continuance of industrial proceedings pending before any authority/court/tribunal prescribed by the Act in a peaceful atmosphere undisturbed by any other industrial dispute. In course of time, it was felt that the un-amended Section 33 was too stringent, for it placed a total ban on the right of the employer to make any alteration in conditions of service or to make any order of discharge or dismissal even in cases where such alteration in conditions of service or passing of an order of dismissal or discharge, was not in any manner connected with the dispute pending before an industrial

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authority. Section 33 was, therefore, amended in 1956 to permit the employer to make changes in conditions of service, or to discharge or dismiss employees in relation to matters not connected with the pending industrial dispute. At the same time, it was also felt necessary that some safeguards must be simultaneously provided for the workmen, and therefore a provision was made that the employer must make an application for prior permission if the proposed change in the service conditions, or the proposed dismissal/discharge is in connection with a pending dispute. In other cases where there is no such connection, and where the workman is to be discharged or dismissed, (i) firstly there has to be an order of discharge or dismissal, and then it was laid down in the proviso to Section 33 (2) (b) that, (ii) the concerned workman has to be paid wages for one month, and (iii) an application is to be made to the authority concerned before which the earlier proceeding is pending, for approval of the action taken by the employer.

13. In paragraph 13 of the judgment this Court noted that the contravention of Section 33 invites a punishment

under Section 31 (1) of the Act. Hence, the proviso to Section 33 (2) (b) cannot be diluted or disobeyed by an employer. It is a mandatory provision made to afford a protection to the workmen to safeguard their interest, and it is a shield against victimization and unfair labour practice by an employer during the pendency of an industrial dispute. Therefore, the order made without complying with the said proviso is void and inoperative.

14. 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 para reads as follows:-

> *"**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)

15. The same paragraph lays down that if a workman is aggrieved by the approval, his remedy is to file a Complaint under Section 33A 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. This Section 33A reads as follows:-

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> *"33A.* ***Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceeding.-*** *Where an employer contravenes the provisions of section 33 during the pendency of proceedings [before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal] any employee aggrieved by such contravention, may make a complaint in writing, [in the prescribed manner,-*
>
> *(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such compliant into account in mediating in, and promoting the settlement of, such industrial dispute; and*
>
> *(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the* ***arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.****"*
>
> (emphasis supplied)

As can be seen, sub-section (b) of Section 33A clearly lays down that when such a Complaint is made, the Tribunal shall adjudicate upon the Complaint as if it were a dispute referred to it, and shall submit his or its award to the appropriate Government, and the provisions of this Act shall apply

accordingly. Thus, in that complaint, the employee will have to prove his case on merits.

16. The purpose behind enacting Section 33A and the scope thereof was succinctly explained by Gajendrakar J (as he then was), in a judgment by a bench of three judges in **Punjab National Bank Ltd. vs. All India Punjab National Bank Employees Federation & Anr**. reported in **AIR 1960 SC 160**. In paragraph 31 thereof the Court noted that the Trade Union movement in the country had complained that the remedy for asking for a reference under Section 10 involved delay, and left the redress of the grievance of the employees entirely in the discretion of the appropriate Government; because even in cases of contravention of Section 33 the appropriate Government was not bound to refer the dispute under Section 10. That is why Section 33A was enacted to make a special provision for adjudication as to whether Section 33 has been contravened. This section enables an employee aggrieved by such contravention to make a complaint in writing in the prescribed manner to the tribunal and it adds that on receipt of such complaint the

tribunal shall adjudicate upon it as if it is a dispute referred to it in accordance with the provisions of the Act. Thus by this section the aggrieved employee is given a right to move the tribunal without having to take recourse to Section 10 of the Act.

17. Thereafter while dealing with the scope of the Section 33A, the court surveyed the judgments then holding the field, and held at the end of paragraph 33 in the following words:-

> *"33..... **Thus there can be no doubt that in an enquiry under S. 33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of S. 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 S. 33A. **Therefore, we cannot accede to the argument that the enquiry under S. 33A is confined only to the determination of the question as to whether the alleged contravention by the employer of the provisions of S. 33 has been proved or not.**"*
>
> (emphasis supplied)

This judgment has been referred to, and the proposition has been once again reiterated by a bench of three Judges in para 7 of **Delhi Cloth and General Mills Co. Ltd. vs. Rameshwar Dayal** reported in **AIR 1961 SC 689**.

18. This legal position has been reiterated in the judgment of the Constitution Bench in **P.H. Kalyani vs. M/s Air France Calcutta** reported in **AIR 1963 SC 1756** which has been quoted with approval in paragraph 17 of Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd. (supra). In that matter, the respondent employer had applied under Section 33 (2) (b), but the workman had also filed a Compliant under Section 33A which was heard like a Reference. Evidence was led therein by the parties, and on its own appraisal of the evidence the Labour Court had held that the dismissal was justified. This Court accepted that finding, and it was held that the approval when granted will relate back to the date when the order of dismissal was passed. On the other hand, if the employer fails to prove the misconduct, the order of dismissal will become ineffective from the date when the dismissal order was passed by the employee. This legal

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position has been reiterated from time to time [see for instance **Lalla Ram vs. D.C.M. Chemicals Works Ltd.** reported in **1978 (3) SCC 1**]. In Jaipur Zila Sahakari Bhoomi Vikas Bank (supra) the Constitution Bench endorsed the view taken in Strawboard (supra) and Tata Iron & Steel Co. (supra) and held that the view expressed in Punjab Beverages (supra) was not correct.

19. In the present case, the Tribunal accepted that during this very short span of service as a daily wager the respondent had committed the misconduct which had been duly proved. Having held so, the Tribunal was expected to dismiss the Complaint filed by the respondent. It could not have passed the order of reinstatement with continuity in service in favour of the respondent on the basis that initially the appellant had committed a breach of Section 33 (2) (b) of the Act. It is true that the appellant had not applied for the necessary approval as required under that section. That is why the Complaint was filed by the respondent under Section 33A of the Act. That Complaint having been filed, it was adjudicated like a reference as required by the statute. The

same having been done, and the misconduct having been held to have been proved, now there is no question to hold that the termination shall still continue to be void and inoperative. The de jure relationship of employer and employee would come to an end with effect from the date of the order of dismissal passed by the appellant. In the facts of the present case, when the respondent had indulged into a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service. The learned Single Judge of the High Court as well as the Division Bench have fallen in the same error in upholding the order of the Tribunal.

20. Since the Complaint was decided like a reference, and since we are holding that it ought to have been dismissed, we are not required to go into the alternative submission that the appellant be given further liberty, to de novo apply under Section 33 (2) (b) on the lines of the judgment in United Bank of India (supra). However, we make it clear that once the Complaint under Section 33A is decided, there is no question of granting any such liberty. Besides, we

would like to observe that such liberty was given in the case of United Bank of India (supra) “considering the background facts of the case” as stated in paragraph 11 of the said judgment.

21. In the instant case, the respondent was employed as a daily rated employee for a period of three months, and thereafter was continued for a few months more. There was no question of his being in service even for one continuous year, since he had obviously not completed 240 days of service. During this short span of service there were various allegations against him. The appellants could have discontinued him from service as it is, since he was a daily wager. However, since there was an allegation of misconduct, they afforded him an opportunity to explain. At the time of the incident of checking of the bus, the respondent did not sign the way-bill, nor did he attend the inquiry, wherein, he was called to explain his conduct. This led to his dismissal from service. He chose to file a Civil Suit in a wrong Court at Jaipur. The Civil Court which heard the suit held that the misconduct had been proved, and the

termination could not be faulted. However, the very Court held that it did not have the territorial jurisdiction to decide the suit. Therefore one may keep aside the finding of that Court concerning the misconduct. However, when the respondent filed the Complaint under Section 33A, the Industrial Tribunal also returned the same finding in paragraphs 8 and 9 of its award that the appellant had proved the misconduct. This being the position, this finding will relate back and the employer employee relationship between the parties will be deemed to have ended from the date of the dismissal order passed by the appellant.

22. For the reasons stated above, this Civil Appeal is allowed. We hereby set-aside the judgment and order rendered by the Division Bench of the Rajasthan High Court in D.B. Special Appeal (Writ) No.1093 of 2005, dismissing the appeal filed by the appellants against the judgment and order dated 19th July, 2005, rendered by a learned Single Judge of that High Court in Civil Writ Petition No. 3933 of 2009, confirming the award dated 3.12.2002 rendered by the Industrial Tribunal, Jaipur in Case No. I.T. No.41 of 1994. All

the three judgments, except the finding in paragraph 8 and 9 of the Industrial Tribunal, Jaipur in Case No. I.T. No.41 of 1994 are hereby set-aside. Consequently, the said Complaint being case No. I.T. No.41 of 1994 shall stand dismissed requiring no order on the Civil Writ Petition No.3933 of 2009 and D.B. Special Appeal (Writ) No.1093 of 2005. Both of them will stand disposed of. In the facts of the present case however, we do not make any order as to costs.

.....J.
[H.L. GOKHALE]

.....J.
[RANJAN GOGOI]

New Delhi
Dated: April 9, 2013

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