

2025.PHHC.022145-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**LPA-967-2024 (O&M)
Reserved on: 24.01.2025
Date of decision: 11.02.2025**

M/S BENETON INDIAN PRIVATE LIMITED

.....Appellant

Versus

THE ASSISTANT LABOUR COMMISSIONER CIRCLE-4 AND
ORS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. Pawan Kumar Mutneja, Senior Advocate with
Ms. Suverna Mutneja, Advocate for the appellant.

Mr. Munish Sharma, DAG, Haryana.

Ms. Abha Rathore, Advocate for respondent No.3.

SUDHIR SINGH, J.

Challenge in the instant intra Court appeal is to the order dated 04.03.2024 passed by the learned Single Judge, whereby the writ petition filed by the appellant, challenging the order dated 04.04.2022 (Annexure P1) passed by the Assistant Labour Commissioner, Circle-4, Gurugram, was dismissed.

2. The respondent-workman was engaged by the appellant on 01.09.1995. He was charge-sheeted on 10.02.2020. He filed his reply dated 13.02.2020. In the domestic enquiry conducted, the charges against the respondent-workman, stood proved. The

respondent-workman was issued a show cause notice on 22.03.2021 and the copy of the enquiry report dated 08.08.2021 was sent to him on 24.03.2021. He submitted his reply on 24.03.2021. The appellant-Management had filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short 'the Act'). The respondent-workman filed his reply and vide order dated 04.04.2022, the Assistant Labour Commissioner, Circle-4, Gurugram, dismissed the said application of the appellant-Company.

3. The learned Single Judge, while relying upon the judgments of the Hon'ble Supreme Court in **Lalla Ram vs. Management of D.C.M. Chemical Works Ltd. and another**, 1978 AIR (Supreme Court) 1004 and **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd vs. Ram Gopal Sharma**, 2002 AIR (Supreme Court) 643, has held that the proceedings under Section 33(2)(b) of the Act are not to be decided like a complete reference and, therefore, the order passed by the Assistant Labour Commissioner, does not appear to be ingenuine from any angle.

4. Learned Senior Counsel appearing for the appellant-Company, argues that the jurisdiction of the Conciliation Officer is limited under Section 33(2)(b) of the Act, only to examine whether a *prima-facie* case has been made out by the appellant for the termination of the respondent's service. It is further argued that the provisions of Section 33 (2)(b), do not mean that he shall substitute his view for the view taken by the Management. Reference in this regards is made to the judgment of the Hon'ble Supreme Court in

John D'Souza vs. Karnataka State Road Transport Corporation,

(2019) 18 SCC 47. It is further argued that the Assistant Labour Commissioner had exceeded his jurisdiction in coming to the conclusion different from the one taken by the Management. It is further argued that the Assistant Labour Commissioner had no jurisdiction under Section 33(2)(b) of the Act, to comment or adjudicate upon the report of the domestic enquiry and the same is in contravention of the judgment of the Hon'ble Supreme Court in **John D'Souza's case (supra)**. It is further argued that it is only the jurisdiction of the Labour Court, upon a reference being made by the Appropriate authority, to examine the legality of the domestic enquiry. It is further argued that the unit of the appellant-Management stands already closed and, thus, there is no question of re-instatement or continuity of service of the respondent-workman. It is yet further argued that the domestic enquiry was conducted in terms of the standing order and, therefore, no prejudice was caused to the right of the respondent-workman. Yet further, it is argued that upon a complaint made by the Management, the Labour Commissioner, Haryana, sent a letter to the Assistant Labour Commissioner to stay his hands and directed the Deputy Labour Commissioner, an officer higher in rank than the Assistant Labour Commissioner, to examine the complaint at his own level, but the Assistant Labour Commissioner had proceeded on to pass the impugned order in violation of the said directions.

5. The learned Senior counsel for the appellant-Company has further contended that the charges against the respondent-

workman were grave in nature as the appellant-Company was engaged in manufacturing different brands of cloth and the respondent-workman had committed theft of the pieces of said cloth and, therefore, he was rightly found guilty in the domestic enquiry. It is, thus, argued that the impugned orders passed by the learned Single Judge and the Assistant labour Commissioner, are liable to be set aside.

5. On the other hand, learned counsel for the respondent-workman has argued that Section 33(2)(b) of the Act, makes it clear that the application for approval is to be made to the authority/Tribunal where the earlier dispute between the Management and the workman is pending. In the instant case, the general demand notice of the Union was pending with the Assistant Labour Commissioner and, therefore, the Management had made said application before the said authority and that there is no provision as regards the transfer of proceedings from the Assistant Labour Commissioner to any other Assistant Labour Commissioner. It is further argued that the issue as regards the provisions of Section 33(2)(b) and exceeding of the jurisdiction by the Assistant Labour Commissioner, was not raised before the learned Single Judge and the same cannot be allowed to be raised before this Court for the first time. Yet further, it is submitted that the appellant cannot be allowed to raise the arguments as regards the closure of the unit as the order dated 04.04.2022 was passed much before the alleged closure of the unit of the Management on 30.04.2022. It is, further argued that when the very action of the Management suffers from *mala fide* and points

towards the victimization of the workman, the competent authority has the jurisdiction to examine such aspect of the matter.

6. We have heard the learned counsel for the parties and have also gone through the impugned order.

7. The only question that arises for consideration by this Court is whether the impugned order passed by the learned Single Judge, requires any interference.

8. It is not disputed that the respondent-workman was charge-sheeted on 10.02.2020 and in the domestic enquiry, he was found guilty. However, the fact remains that the appellant-Management had filed the application for approval of his termination before the Assistant Labour Commissioner. The Assistant Labour Commissioner has passed the order dated 04.04.2022, finding that though he had no jurisdiction to consider the enquiry report, yet the facts on record showed that the enquiry officer being a junior Advocate of Mr. M.M. Kaushal, Sr. counsel for the Management, who was also appearing in some cases along with Mr. Kaushal, he (enquiry officer) was not fair in preparing the enquiry report. Apart from that, it was also found that one month notice pay, paid to the respondent-workman, was less than one month's salary, which was in violation of the provisions of Section 33(2)(b) of the Act. Accordingly, the approval of termination was declined.

9. At the first instance, though the argument of the learned Senior counsel for the Management, seems to be attractive, yet after examination of the record and the provisions of Section 33(2)(b) of the Act, we find that the Assistant Labour Commissioner, while

passing the order dated 04.04.2022 did not exceed his jurisdiction. It was only held that the enquiry was not conducted in a fair manner and the payment of one month's salary was short. The reliance of the learned Senior counsel on **John D'Souza's case (supra)**, rather helps the case of the respondent-workman. In the said judgment, it has been held that the jurisdiction of the Tribunal under Section 33(2)(b), in dealing with an application is very limited, but if it appears to the Tribunal that the proposed dismissal of the employee amounts to victimization or an unfair labour practice, the jurisdiction can be exercised. It was held as under:

“26. A three-Judge Bench of this Court in Punjab National Bank Ltd. v. Workmen [Punjab National Bank Ltd. v. Workmen, (1960) 1 SCR 806: AIR 1960 SC 160], considered and interpreted the scope of Section 33 to lay down that the jurisdiction of the Tribunal in dealing with such applications is limited. It was held that: (AIR p.170, paras 24-25)

“24. Where an application is made by the employer for the requisite permission under Section 33 the jurisdiction of the Tribunal in dealing with such an application is limited. It has to consider whether a prima facie case has been made out by the employer for the dismissal of the employee in question. If the employer has held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimisation or an unfair labour practice, the Tribunal has to limit its enquiry only to the question as to whether a prima facie case

has been made out or not. In these proceedings it is not open to the Tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the Tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the prima facie aspect of the matter and either grant the permission or refuse it accordingly as it holds that a prima facie case is or is not made out by the employer.

25. But it is significant that even if the requisite permission is granted to the employer under Section 33 that would not be the end of the matter. It is not as if the permission granted under Section 33 validates the order of dismissal. It merely removes the ban; and so the validity of the order of dismissal still can be, and often is, challenged by the union by raising an industrial dispute in that behalf. The effect of compliance with the provisions of Section 33 is thus substantially different from the effect of compliance with Section 240 of the Government of India Act, 1935, or Article 311(2) of the Constitution. In the latter classes of cases, an order of dismissal passed after duly complying with the relevant statutory provisions is final and its validity or propriety is no longer open to dispute; but in the case of Section 33 the removal of the ban merely enables the employer to make an

order of dismissal and thus avoid incurring the penalty imposed by Section 31(1). But if an industrial dispute is raised on such a dismissal, the order of dismissal passed even with the requisite permission obtained under Section 33 has to face the scrutiny of the Tribunal."

10. The factum of payment of less salary for one month's notice, was proved and it was also found that the enquiry was conducted by an Advocate, who was junior to the Senior standing counsel to the appellant-Company, and he was also appearing in some cases for the Company. From the said fact, a prudent conclusion can be drawn that such an enquiry officer could not give an independent report.

11. So far as the argument of the learned Senior counsel as regards the complaint against the Assistant Labour Commissioner, having been forwarded by the Labour Commissioner, Haryana to the Deputy Labour Commissioner, is concerned, the same has been dealt with by the learned Single Judge and rightly so as the said letter of the Labour Commissioner, Haryana, to the Deputy Labour Commissioner Circle-1 Gurugram, only deals with the complaint received in office and not the application already pending before the Assistant Labour Commissioner. Therefore, it cannot be said that pursuant to the said letter, the proceedings under Section 33(2)(b) stood automatically transferred before the Deputy Labour Commissioner Circle-1, Gurugram and/or the Assistant Labour Commissioner could have stayed his hands back. Learned Senior counsel for the appellant-

Company could not refer to any provision of the Act, stipulating the transfer of the proceedings pending before the Assistant Labour Commissioner Circle-4, Gurugram to any other Labour Commissioner/Tribunal.

12. The argument of the learned Senior counsel as regards the respondent-workman committing the theft of the pieces of cloth is devoid of any merit as the charges framed against the respondent-workman would clearly show that no charge regarding the theft was framed.

13. We find that the impugned order passed by the learned Single Judge, cannot be said to be illegal or perverse warranting interference by this Court in the instant appeal.

14. No other point has been urged.

15. In view of the above findings, no merit in the present appeal, the same is hereby dismissed.

17. Pending application(s), if any, shall stand disposed of.

**[SUDHIR SINGH]
JUDGE**

**[SUKHVINDER KAUR]
JUDGE**

11.02.2025

himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No