

HIGH COURT OF JHARKHAND**Bench : HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY****Date of Decision: 14th May 2024**

W.P.(L) No. 3043 of 2022

Management of Usha Martin Limited ...Petitioner**Versus****Dharmendra Kumar ...Respondent****The State of Jharkhand ...Respondent****The Secretary, Department of Labour, Employment and Training, Govt. of Jharkhand ...Respondent****The Chief Labour Commissioner (Jharkhand) ...Respondent****Legislation:**

Section 10(1)©, Section 10(2A) of the Industrial Disputes Act, 1947

Section 33(2)(b), Section 33-A of the Industrial Disputes Act, 1947

Section 10 of the CPC

Subject: Writ petition challenging the reference of the dispute regarding the dismissal of a workman to the Labour Court, Ranchi, and the dismissal of an application to keep proceedings in abeyance.

Headnotes:

Labour Law - Industrial Dispute - Reference under Section 10(1)(c) and 10(2A) of Industrial Disputes Act, 1947 - Pending Miscellaneous Cases - Labour Court Adjudication – High Court upheld the reference made by the State Government to the Labour Court regarding the dismissal of the respondent-workman despite the pendency of Miscellaneous Cases under Section 33(2)(b) and Section 33-A before the Industrial Tribunal. The

jurisdiction of the Labour Court under Section 10 and the Industrial Tribunal under Section 33(2)(b) being distinct, the Labour Court proceedings were not required to be stayed. The High Court emphasized the summary nature of proceedings under Section 33(2)(b) and their non-binding effect on the merits of disputes adjudicated under Section 10. [Paras 13-24]

Industrial Dispute – Judicial Precedents - Section 33(2)(b) Proceedings - Summary Enquiry and Non-Binding Nature on Section 10 Proceedings – Referring to precedents, the High Court highlighted that proceedings under Section 33(2)(b) are summary, involving a two-stage scrutiny to determine the prima facie case and compliance with natural justice principles. Findings in such summary proceedings do not bind the Labour Court’s adjudication under Section 10, which provides a comprehensive mechanism for dispute resolution involving the dismissal of workmen. [Paras 17-23]

Decision: Reference to Labour Court Upheld – The reference made by the State Government under Section 10(1)© and Section 10(2A) is maintainable.

Rejection of Stay Application Upheld – The Labour Court was justified in rejecting the application to stay the proceedings in the reference case.

Extension of Time for Filing Written Statement – The time for filing the written statement by the petitioner is extended until 30th June 2024. [Para 26]

Referred Cases:

- Cholan Roadways Ltd. Vs. G. Thirugnanasambandam, (2005) 3 SCC 241
- John D’souza vs. Kamata State Road Construction Corporation, (2019) 18 SCC 47
- National Engineering Industries Ltd. Vs. State of Rajasthan and Others, (2000) 1 SCC 371
- Kanwar Singh Saini vs. High Court of Delhi, (2012) 4 SCC 307
- Rajasthan State Road Transport Corporation vs. Bharat Singh Jhala (Dead) Son of Shri Nathu Singh, Through Legal Heirs and Another, (2022) SCC Online SC 1335
- Shambhu Nath Goyal vs. Bank of Baroda, (1983) 4 SCC 491
- Karnataka State Road Transport Corpn. Vs. Lakshmiddevamma and Anr., (2001) 5 SCC 433

Representing Advocates:

For the Petitioner: Mr. Nipun Bakshi, Mr. Shubham Sinha, Mr. Mrinal Singh

For the State: Mr. Abhinay Kumar, AC to AAG-I

For the Workman: Mr. Dharmendra Kumar, In-person

JUDGEMENT

Heard the learned counsel for the petitioner, State and the respondent-workman appearing in-person.

2. This writ petition has been filed for two reliefs which are as follows: -

(i) *For quashing the Notification No. 1225 dated 22.10.2021(Annexure-5) issued by the respondent no. 3 whereby the reference under Section 10(1) (c) read with section 10(2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act of 1947') has been made to the learned Labour Court, Ranchi for deciding the terms of reference as specified therein:*

"Whether the dismissal of workman Mr. Dharmendra Kumar from services by Management M/s. Usha Martin and Industrial Limited, Tatisilwai, Ranchi is justified? If not, then what relief he is entitled to?"

The reference case has been numbered as Reference Case No. 06 of 2021.

And/Or

(ii) For quashing of the order dated 06.06.2022 (Annexure-8) passed by Labour Court, Ranchi, in the aforesaid Reference Case No. 06 of 2021, whereby the petitioner's application under the principles of Section 10 of C.P.C. has been dismissed.

It is the case of the petitioner that Miscellaneous Case No. 1/2021 and Misc. Case No. 02/2021 have been instituted by the workman and by Management respectively before the Industrial Tribunal, Ranchi, the third case on the same subject matter being the aforesaid Reference Case No. 6 of 2021 ought to be kept in abeyance because all three cases

cannot be proceeded simultaneously and parallelly by two different courts.”

3. The learned Presiding Officer, Labour Court, Ranchi passed the impugned order dated 06.06.2022 (Annexure-8) rejecting the petition dated 31.01.2022 filed by the petitioner-management on the following terms:

“Hon’ble Supreme Court in the case of Cholan Roadways Ltd. versus G. Thirugnanasambandam, (2005) 3 SCC 241 13 has been pleased to held that, “It is neither in doubt nor in dispute that the jurisdiction of the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act is a limited one. The jurisdiction of the Industrial Tribunal under Section 33(2)(b) cannot be equated with that of Section 10 of the Industrial Disputes Act. While exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to seek as to whether a prima facie case has been made out as regards the validity or otherwise of the domestic enquiry held against the delinquent, keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act.

Therefore, in the light of the above discussions, it can be concluded that the scope of both proceedings i.e. under Section 33(2)(b) & Section 10 of I.D. Act are different. The jurisdiction of the tribunal under Section 33(2)(b) of the I.D. Act is limited and it is not the substitute of the reference made under Section 10 of the I.D. Act. Section 33(2)(b) has been inserted for a purpose other than that for which Section 30(1)(c) and (d) have been enacted. Section 33(2)(b) is neither meant for, nor does it engender an overlapping procedure to adjudicate the legality, propriety, justifiability or otherwise sustainability of a punitive action taken against a workman. Section 33(2)(b) of the Act contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. As a natural corollary thereto, the Court or Forum concerned lifts the veil to find out that there was no hidden motive to punish the workman or an

abortive attempt to punish him for a non-existent misconduct. Such like summary proceedings are not akin and at par with its jurisdiction to adjudicate an 'industrial dispute' under Section 10(1)(c) and (d) of the Act, nor the former provision clothe it with the power to peep into quantum of punishment for which it has to revert back to Section 11A of the Act. The Labour Court or Tribunal, while holding enquiry under Section 33(2)(b) cannot invoke the adjudicatory powers vested in them under Section 10(1)(c) and (d) of the Act, nor can they in the process of formation of their prima facie view under Section 33(2)(b), dwell upon the proportionality of punishment. An order of approval granted under Section 33(2)(b) has no binding effect in the proceeding under Section 10(1)(c) and (d) which shall be decided independently while weighing the material adduced by the parties before the Labour Court/ Tribunal and the decision on the application under Section 33(2)(b) does not close the right of the workman to raise an industrial dispute under Section 10 of the I.D. Act.

Further under Section 10 of the I.D. Act, the appropriate Government can refer industrial dispute to a labour court as well as to industrial tribunal. Since the dispute has been referred & received on this court, hence, this court is bound to adjudicate and decide the same.

In view of the discussion made herein above, I find no force in the application of the management and proceeding of this reference case cannot be stayed in view of the pendency of misc. case no.02/21 before the Industrial Tribunal. Accordingly, the petition dated 31.01.22 filed by the management is rejected. The management is directed to file written statement positively by the next date. Put up on 04.07.2022 for filing written statement by the management.”

4. Case and arguments of the petitioner- Management

- A. The petitioner is engaged in the production of wire ropes and after the outbreak of the pandemic of COVID -19 in the year 2020/ 2021 when the process of production was being restored, the respondent-workman began to create problem by indulging indiscipline and attempting to hinder production. When all the workers were asked to join their duties the respondent-workman neither join the duty nor gave any reasonable explanation for his absence for

over one month. A show cause notice dated 09.06.2020 was issued; on 15.06.2020 the respondent-workman submitted his explanation; on 18.06.2020, the respondent-workman went to the factory gate and raised inflammatory slogans and repeatedly abused the management in very filthy language; a charge-sheet-cumsuspension letter dated 19.06.2020 was issued to the respondent-workman and after enquiry and following the procedure, the respondent-workman was dismissed vide order dated 06.05.2021.

B. At the time of dismissal two cases were pending-

(i) a reference case of general nature in Ref. Case No. 01 of 2017 containing demands for hike in wages, etc. before the Industrial Tribunal.

(ii) The respondent-workman has filed a Complaint under Section 33-A of the Act of 1947 registered as Misc. Case No. 01/2021 challenging the action of issuance of charge sheet during the pendency of aforesaid Ref. Case No. 01 of 2017.

C. Since the respondent-workman was dismissed from service, while Ref. Case No. 01 of 2017 was pending, on 06.05.2021, the petitioner filed an application under Section 33(2)(b) of the Act of 1947 before the Industrial Tribunal seeking approval of the action of dismissal of the respondentworkman which was registered as Misc. Case No. 02/2021.

D. On the other hand, the respondent-workman also raised an industrial dispute before the Labour Department and got a reference made under Section 10 (1) (c) and section 10(2A) of the Act of 1947 vide Notification No. 1225 dated 22.10.2021 (Annexure-5) challenging his dismissal order dated 06.05.2021, which was registered as Ref. Case No. 06 of 2021 before the Labour Court, Ranchi.

E. On receiving notice, the petitioner filed a petition dated 31.01.2022 (Annexure-6) before Labour Court, Ranchi in Ref. Case No. 06 of 2021 with a prayer to keep it in abeyance till disposal of Misc. Case No. 01/2021 filed by the respondentworkman under section 33-A of the Act of 1947 and Misc. Case No. 02/2021 filed by the petitioner under section 33(2)(b) of the Act of 1947. The respondent-workman submitted his rejoinder on 14.02.2022 contending that since the office of the learned Presiding Officer, Industrial Tribunal was vacant, the Ref. Case No. 06 of 2021 before the learned Labour Court should continue. The petition dated 31.01.2022 (Annexure-6) has been

dismissed vide impugned order dated 06.06.2022. The petitioner has also challenged the Reference itself made by the State Government vide impugned notification no. 1225 dated 22.10.2021 on account of which Ref. Case No. 06 of 2021 has been instituted.

F. The learned counsel for the petitioner, while assailing the Reference itself has submitted that a proceeding in connection with the action taken against the respondent-workman was pending before the learned Industrial Tribunal, Ranhi in Misc. Case No. 01/2021 filed under section 33-A challenging the issuance of charge-sheet and during its pendency the disciplinary proceedings continued and the respondentworkman was dismissed from service. A petition was filed by the petitioner under section 33(2) (b) seeking approval of the order of dismissal which was numbered as Misc. Case No. 02 of 2021 which was also pending before the learned Industrial Tribunal, Ranchi. As the Industrial Tribunal is non-functional there is no progress. However, in the said two proceedings, the cases are to be treated as reference under section 10 of the Act of 1947.

G. In the meantime, the respondent-workman also sought reference with regard to his order of dismissal and reference has been made by the respondent-State numbered as Ref. Case No. 06 of 2021 pending before the Labour Court.

H. The learned counsel for the petitioner submitted that while deciding the Misc. Case No. 02 of 2021, the Industrial Tribunal will have the jurisdiction to consider the legality and validity of the order of dismissal which has been passed during the pendency of Ref. Case No. 01 of 2017, and the point of victimization, if any, will also be considered in the said proceedings which is to be treated as a reference under Section 10 of the Act of 1947 and therefore the reference made under Section 10 dealing with the same order of dismissal is not maintainable and there is a likelihood of contradictory orders being passed in Ref. Case No. 06 of 2021, which is a fresh reference, and in Misc. Case No. 02 of 2021. It is submitted that keeping this in mind, a petition was moved in Ref. Case No. 06 of 2021 in terms of Section 10 of the CPC to stay the subsequent proceedings arising out of the reference under Section 10 (Ref. Case No. 06 of 2021) during the pendency of Misc. Case No. 02 of 2021 which has been rejected vide impugned order dated 06.06.2022. The petitioner has challenged the order dated 06.06.2022 passed in Ref. Case No. 06 of 2021 as well as the reference itself.

I. The learned counsel for the petitioner referred to the judgment passed by the Hon'ble Supreme Court reported in **(2000) 1 SCC 371 (National Engineering Industries Ltd. Vs. State of Rajasthan and Others)** to submit that the reference cannot be challenged before the Labour Court and the same has to be challenged only in writ jurisdiction.

J. He also relied upon the judgment passed by the Hon'ble Supreme Court reported in **(2012) 4 SCC 307 (Kanwar Singh Saini Vs. High Court of Delhi)** (Paragraphs 22 and 23) to submit that no jurisdiction can be conferred even by consent of the parties. He submitted that in the aforesaid judgment it has been held that if an act has to be done in a particular manner, the same has to be done in that manner only, or not at all.

K. The learned counsel also relied upon the judgment passed by the Hon'ble Supreme Court reported in **(2022) SCC Online SC 1335 (Rajasthan State Road Transport Corporation Vs. Bharat Singh Jhala (Dead) Son of Shri Nathu Singh, Through Legal Heirs and Another)** (Paragraphs- 13 and 14) to submit that under the provisions of Section 33(2)(b) of the Act of 1947, the legality and validity of the dismissal of the petitioner will be taken into consideration and therefore, the subsequent reference under Section 10 to decide the same dispute regarding dismissal of the respondent workman is not maintainable. He has also relied upon the judgement passed by this Court in the case of **Food Corporation of India versus Kumar Madan Mohan reported in 2023 SCC OnLine Jhar 1164** to submit that the order of dismissal cannot be set-aside on mere non-compliance of Section 33 of the Act of 1947 but the case has be decided on merits as a reference under section 10 of the Act of 1947 in Misc. Case No. 02/2021 and submits that there was no need for a separate reference under section 10 of the Act of 1947 as parallel proceedings may lead to conflicting order.

5. **Case and Arguments of the Respondent Workman.** I. The respondent-workman is the Working President of the Union, namely, Engineering Mazdoor Sabha affiliated to Hind Mazdoor Sabha bearing Registration No. 1304.

II. Misc. Case No. 01 of 2021 filed by respondent-workman has already been withdrawn.

III. Misc. Case No. 02 of 2021 filed by the petitioner Management for approval of termination under Section 33(2)(b) of the Industrial Disputes Act, 1947 is nothing, but to delay the justice and harass the respondent-workman. As reference under Section 10 of the Industrial Disputes Act, 1947 has been

made for deciding the validity of dismissal of the respondent workman and as such, Misc. Case No. 02 of 2021 filed by the petitioner-Management seeking approval of order of dismissal has become infructuous.

IV. The reference was maintainable in view of the fact that as per the provisions of Section 2A of the Act of 1947, the dispute in connection with his dismissal could be raised by him in individual capacity only within a period of three years from the date of dismissal. Had he not raised the industrial dispute, his claim to challenge the order of dismissal would have become time barred. It is the evil design of the petitioner-Management by filing Misc. Case No. 02 of 2021 before the Industrial Tribunal which is non-functional and thereby, preventing the workman from agitating his independent case under Section 2A of Industrial Disputes Act in Ref. Case No. 06 of 2021.

V. The respondent-workman has relied upon a judgment passed by the Hon'ble Andhra Pradesh High Court reported in **(2005) ILLJ 980 (AP) (Worldwide Diamond Manufacturers Vs. Presiding Officer, Industrial)** (Paragraphs 5 and 13).

6. Case and Arguments of the Respondent-State.

- i. The respondent-workman raised an industrial dispute against the dismissal order dated 06.05.2021 in which conciliation proceeding was initiated, but the conciliation proceeding could not reach to a settlement as defined under Section 2(p) of the Act of 1947 and the conciliation failed. The Conciliation Officer submitted its report under Section 12(4) for reference of the dispute for adjudication. Considering it to be an existing Industrial Dispute, the Government referred the dispute to the Labour Court, Ranchi in terms of Section 10(1)(c) of the Act of 1947 which has been registered as Ref. Case No. 06 of 2021. Misc. Case No. 01 of 2021 and Misc. Case No. 02 of 2021 are two different cases.
- ii. Misc. Case No. 01 of 2021 was filed under Section 33-A of the Act of 1947 by the respondent-workman which is a Complaint dated 07.01.2021 filed before the date of dismissal order dated 06.05.2021 in apprehension of his termination and during pendency of Ref. Case No. 03 of 2014 and Ref. Case No. 01/2017 before the Industrial Tribunal, Ranchi.
- iii. Misc. Case No. 02 of 2021 was filed under Section 33(2)(b) of the Act of 1947 by the petitioner-Management seeking approval of the action taken i.e. the dismissal order dated 06.05.2021.

- iv. Ref. Case No. 06 of 2021 has been referred to the learned Labour Court, Ranchi after issuance of the order of dismissal dated 06.05.2021 containing the issue specified in Notification No. 1225 dated 22.10.2021.
- v. Misc. Case No. 01 of 2021 does not bar the Government to refer the existing dispute cropped up due to issuance of the dismissal order dated 06.05.2021 for adjudication. The cause of action for reference of the dispute before the Labour Court, Ranchi in connection with Ref. Case No. 06 of 2021 arose much after the date of filing of Misc. Case No. 01 of 2021. The jurisdiction and scope of the Labour Court / Tribunal under Section 33(2)(b) and Section 10 of the Act of 1947 is different as held in the judgment, ***Punjab Beverages Pvt. Ltd. Chandigarh -vs- Suresh Chand & Anr (1978) 2 SCC 144***. The cause of action under Section 33-A and the reference under Section 10 of the Industrial Disputes Act, 1947 are also different.
- vi. The learned counsel for the State, while opposing the prayer, submitted that the scope of jurisdiction under Section 33(2)(b) of the Act of 1947 and that of Reference under Section 10 of the Act of 1947 are totally different. The petition filed by the petitioner under Section 33(2)(b) of the Act of 1947 is for approval of the order of dismissal and the reference under Section 10 of the Act of 1947 is for challenging the order of dismissal.

7. **Rejoinder of the petitioner-Management to the argument of the respondent-workman.**

The factum of withdrawal of Misc. Case No. 01 of 2021 by the respondent-workman has been denied by stating that no order has been annexed and no petition for withdrawal was served upon the petitioner. The Misc. Case No. 02 of 2021 filed by the petitioner-Management seeking approval of the action of dismissal has not become infructuous as it is mandatory requirement of law and its non-compliance has serious consequences including penal consequences.

8. **Findings of this Court.**

Provisions of law

9. Sections 31, 33 and 33-A of the Act of 1947 are quoted as under: -

“31. Penalty for other offences-(1) Any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

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.

33-A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.—

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 complaint 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.

10. The Misc. Case No. 01 of 2021 arises out of the plea raised by the respondent-workmen before the Industrial Tribunal challenging the issuance of charge-sheet without seeking written permission of the Industrial Tribunal as the charge sheets were issued during the pendency of Ref. Case No. 01 of 2017. In the meantime, the respondent-workman has been dismissed and the petitioner has filed a petition seeking confirmation of the order of dismissal under Section 33(2) (b) treating the action of dismissal as a matter not connected with the dispute involved in Ref. Case No. 01 of 2017. The respondent-workman claims to have withdrawn Misc. Case No. 1 of 2021 but factum of withdrawal is disputed by the petitioner.
11. In the judgment passed by this Court in the case of ***Food Corporation of India versus Kumar Madan Mohan (L.P.A. No. 446 of 2019)*** reported in ***2023 SCC Online Jhar. 1164***, the provisions of section 33 and section 33-A of the Act of 1947 have been considered and it has been held in paragraph No. 11 of the said judgment that the complaint under Section 33-A of the Act of 1947 is maintainable on account of violation of Section 33 of the Act of 1947, however mere violation of Section 33 does not automatically lead to setting aside of the order of dismissal. It has also been held in paragraph No. 16 of the said judgment that the order of dismissal cannot be set-aside on

mere non-compliance of provisions of Section 33-A of the Act but the Industrial Tribunal/Labour Court has to decide the case as if it was a reference under Section 10 of the Act of 1947. The special leave petition against the aforesaid judgement has been dismissed by the Hon'ble Supreme Court.

12. On the strength of the aforesaid judgment of ***Kumar Madan Mohan (supra)*** and also the judgement passed in the case of ***Bharat Singh Jhala (Dead) (supra)*** , it has been argued by the petitioner that since two petitions are pending before the learned Industrial Tribunal, both arising out of Section 33 of the Act of 1947 one by the workman bearing Misc. Case No. 01 of 2021 and other by the management bearing Misc. Case No. 02 of 2021, those cases are to be decided as if they were reference under Section 10 of the Act of 1947 and therefore the subsequent reference made by the State Government under Section 10(1) (c) and 10 (2-A) of the Act of 1947 is not maintainable. It has also been argued that, otherwise also, the learned Labour Court, Ranchi ought to have stayed further proceedings in Ref. Case No. 06 of 2021 in terms of Section 10 of the C.P.C. as the same issue was pending consideration in aforesaid two proceedings i.e. ***Misc. Case No. 01 of 2021*** and ***Misc. Case No. 02 of 2021***. The situation has resulted in parallel proceedings.

13. The following issues arise for consideration by this Court: -

i. Whether the State Government was justified in referring the industrial dispute regarding dismissal of the respondent-workman vide notification no. 1225 dated 22.10.2021 (Annexure-5) resulting in institution of Ref. Case No. 06 of 2021 before Labour Court, Ranchi, when following two petitions were pending before the Industrial Tribunal, Ranchi: -

a. petition filed by the petitioner under section 33(2) (b) seeking approval of dismissal of the respondent workman (Misc. Case No. 02 of 2021).

b. petition filed by the respondent-workman under section 33-A challenging the issuance of charge-sheet initiating disciplinary proceedings during the pendency of Ref. Case No. 01 of 2017 (Misc. case no. 01 of 2021).

In case the answer to the aforesaid issue is against the petitioner, further question would be, ii. Whether the Labour Court, Ranchi is justified in

rejecting the petition praying to keep the proceedings in abeyance in Ref. Case No. 06 of 2021 till disposal of Misc. Case No. 02 of 2021 filed by the petitioner and Misc. Case No. 01 of 2021 filed by the respondent workman, pending before Industrial Tribunal?

Impact of Misc. Case No. 01 of 2021

14. It is the case of the respondent-workman that Misc. Case No. 01 of 2021 has been withdrawn. The petitioner has submitted that no detail with regards to withdrawal of Misc. Case No. 01 of 2021 has been furnished by the respondent-workman. There is dispute as to whether Misc. Case No. 01 of 2021 has been withdrawn or not and no such finding can be recorded in absence of any order having been brought on record. Apparently, Misc. Case No. 01 of 2021 was filed challenging the charge-sheet issued to the respondent-workman during the pendency of Re. Case No. 01 of 2017. The law is well-settled that the question of prior approval from Industrial Tribunal /Labour Court for initiating a disciplinary proceeding during the pendency of an industrial dispute arises when the proceedings sought to be initiated is connected to the pending dispute and post facto approval is required when the proceedings sought to be initiated is unconnected to the pending dispute. If the Misc. Case No. 01 of 2021 has been withdrawn as claimed by the respondent-workman, nothing remains. If no order of withdrawal has been passed by the Industrial Tribunal in Misc. Case No. 01 of 2021, then also an appropriate order is required to be passed by the Industrial Tribunal upon pressing/filing of a petition seeking withdrawal of the case. Further, Misc. Case No. 01 of 2021 was filed under Section 33 of the Act of 1947 by the respondentworkman challenging the issuance of charge-sheet which is a Complaint filed much before the date of dismissal order dated 06.05.2021 in apprehension of his termination and in the meantime, the order of dismissal has been passed which are under consideration in Misc. Case No. 02 of 2021 and Ref. Case No. 06 of 2021. In the aforesaid circumstances, pendency of Misc. Case No. 01 of 2021 has no bearing in the matter. Accordingly, reference made vide notification no. 1225 dated 22.10.2021 (Annexure-5) resulting in institution of Ref. Case No. 06 of 2021 cannot be set aside on account of Misc. Case No. 01 of 2021 as the cause of action and scope of enquiry in the two proceedings are substantially different.
15. Having held that pendency of ***Misc. Case No. 01 of 2021*** has no bearing in the matter, now the impact of pendency of ***Misc. case no. 02 of 2021*** filed by the petitioner under section 33(2) (b) of the Act of 1947 [pending before the

Industrial Tribunal] on **Ref. Case No. 06 of 2021** [pending before the Labour Court] is to be examined.

16. There is no doubt that seeking approval of order of dismissal was mandatory under Section 33(2) (b) of the Act of 1947 failing which it has serious consequences including penal consequences and the stand of the respondent-workman, that the petition seeking approval of the order of dismissal under Section 33(2)(b) filed by the petitioner has become infructuous, is rejected. The Misc. Case No. 02 of 2021 filed by the petitioner seeking approval of the action taken is required to be decided by the Tribunal. However, the nature and the contours of enquiry is required to be considered so as to decide as to whether further proceedings in the Ref. Case No. 06 of 2021 was required to be stayed.

17. The Labour Court while passing the impugned order refusing to stay the proceedings of the Ref. Case No. 06 of 2021 has rested its findings on the basis of the judgment passed by the Hon'ble Supreme Court in the case of **Cholan Roadways Ltd. vs. Thirugnanasambadam** reported in **(2005) 3 SCC 241** wherein it has been held that jurisdiction of a Labour Court/Tribunal under Section 33(2)(b) is a limited one and cannot be equated with section 10 of the Act of 1947 and the scope of both the proceedings are different.

18. The said judgment of **Cholan Roadways (supra)** has been explained in **John D'souza vs. Kamata State Road Construction Corporation** reported in **(2019) 18 SCC 47** and the earlier judgments particularly the judgments passed in the case of **Mysore Steel Works vs. Jitendra Chandra Kar** reported in **(1971) 1 LLJ 543 (SC)** and **Lalla Ram vs. DCM Chemical Works reported in (1978) 3 SCC 1** which were not cited in the case of **Cholan Roadways (supra)** have been taken into consideration.

The Hon'ble Supreme Court held in the case of **John D'souza** that the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) is in two phases,

- a. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on

examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow.

- b. The 2nd stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified. That is the precise ratio decidendi of the decisions of this Court in (i) *Punjab National Bank Ltd.*, (ii) *Mysore Steel Works (P) Ltd.* and (iii) *Lalla Ram* cases.
19. It has been held in the case of ***John D'Souza (supra)*** that the judgement passed in the case of ***Cholan Roadways (supra)*** was dealing only with the first stage out of the aforesaid two stages of scrutiny mentioned above. It has been held that an order of approval granted under Section 33(2)(b) has no binding effect in the proceedings under Section 10(1)(c) and (d) which is required to be decided independently while weighing the material adduced by the parties before the labour court/Tribunal. It has also been held that the scope and object of Section 33(2)(b) cannot be expanded to an extent that the very scheme of adjudication of an industrial dispute under Section 10(1)(c) and (d) read with Section 11-A of the Act of 1947 becomes superfluous.
20. In the judgment passed by the Hon'ble Supreme Court in ***John D'Souza (supra)***, it has been held that Section 33(2)(b) of the Act of 1947 has been inserted for a purpose other than for which Section 10(1)(c) and (d) have been enacted inasmuch as the legislature has provided a self-contained mechanism through Section 10 read with Section 11(3) and 11-A of the Act of 1947 for adjudication of an industrial dispute stemming out of an order of discharge or dismissal of a workman. Section 33(2)(b) of the Act of 1947 is neither meant for, nor does it engender an overlapping procedure to adjudicate the legality, propriety, justifiability, or otherwise sustainability of a punitive action taken against a workman.
21. Vide paragraph 21 of the judgment passed in the case of ***John D'souza (supra)***, it has been held that neither the legislature intended nor was any legal necessity to set-up a parallel remedy under the same statute for adjudication of "industrial dispute" by the same forum of labour court or Tribunal via Section 33(2)(b) on one hand and Section 10(1) (c) and (d) on

the other. It has also been held vide paragraph 23 of the judgment that Section 33(2)(b) of the Act of 1947 contemplates an enquiry by way of summary proceedings as to whether a proper domestic enquiry has been held to prove the misconduct so attributed to the workmen and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. As a natural corollary thereto, the Labour Court or the forum concerned will lift the veil to find out that there is no hidden motive to punish the workman or an abortive attempt to punish him for a non-existent misconduct. [Paragraph 21, 23, 30, 32, 33, 34, 37 and 38 of the judgment passed in the case of **John D'souza (surpa)**]. **22.** In view of the aforesaid judgement, this Court is of the considered view that though in a proceeding under Section 33(2)(b) of the Act of 1947 dealing with approval of the action taken by the management, though the scrutiny has to be done in two stages mentioned in the case of **John D'souza (surpa)** which would akin to scrutiny in terms of section 10 of the Act of 1947 but the same would be only of a summary nature giving only prima facie findings and the issues decided in such summary manner will have no binding effect on the decision on reference made under Section 10 of the Act of 1947. In the aforesaid position of law, the proceedings in Ref. Case No. 06 of 2021 has rightly not been stayed on account of pendency of Misc. Case No. 02 of 2021. As already held above, the Misc. Case No. 01 of 2021 filed by the workman challenging the charge-sheet also has no bearing in the matter.

23. Consideration of judgement relied upon by the petitioner **A.** The judgement reported in **(2022) SCC Online SC 1335 (Rajasthan State Road Transport Corporation Vs. Bharat Singh Jhala (Dead) Son of Shri Nathu Singh, Through Legal Heirs and Another)**, does not apply to the facts and circumstances of this case. The foundational fact in the case before the Hon'ble Supreme Court was that the application for approval of punishment under section 33(2)(b) of the Act of 1947 was submitted by the Management before the Industrial Tribunal and the Industrial Tribunal held the enquiry bad. However, the Industrial Tribunal allowed the management to prove the charges before the Tribunal and both the parties led evidence, participated in the proceedings and ultimately the order of termination was approved. Thereafter, the workman, upon expiry of 19 years from the date of passing of the order of termination, raised industrial dispute and the labour Court allowed the reference and set-aside the order of termination.

The Hon'ble Supreme Court was of the view that once the order of termination was approved by the Industrial Tribunal and the management was permitted to lead evidence and prove the misconduct before the Court, and thereafter, on appreciation of evidence the order of termination was approved, thereafter, the fresh reference under Section 10 of the Act of 1947 challenging the order of termination was not permissible.

The Hon'ble Supreme Court distinguished the judgment passed in the case of **John D'Souza (supra)** by observing that in the case at hand there was a specific order of the Industrial Tribunal which permitted the management to lead evidence and prove the misconduct before the Court, which as such was permissible. Once the order of termination was approved by the Industrial Tribunal on appreciation of evidence, thereafter the findings recorded by the Industrial Tribunal were binding between both the parties.

- B.** The judgement passed by this court in **Kumar Madan Mohan (supra)** has held that the in case of alleged violation of section 33 of the Act of 1947, the case has to be decided as if it was a reference under section 10. However, when seen in the light of the judgement passed by the Hon'ble Supreme Court in the case of **John D'Souza (supra)**, the enquiry is summary in nature and in two stages and the findings are not binding in reference made under section 10 of the act of 1947. From the judgement passed in the case reported in **(2022) SCC Online SC 1335 (supra)** it is clear that the findings in the proceedings under Section 33 would be binding only if the points raised therein are decided by leading evidence and participation of both the parties.
- C.** Otherwise also, the judgement passed by this Court in the case of **Kumar Madan Mohan (supra)** as well as the judgement passed in the case reported in **(2022) SCC Online SC 1335 (supra)** does not help the petitioner in any manner as the petitioner has simply sought approval of its action of dismissal of the respondent-workman and has not reserved its right to prove the allegation against the respondent workman by leading evidence in case such enquiry suffers from any defect. The petition filed by the petitioner being Misc. Case No. 02 of 2021 does not contain any stipulation reserving right to support the action by leading evidence. Thus, the Misc. Case No. 02 of 2021 is confined to the 1st stage as contemplated in the judgement passed in the case of **John D' Souza (supra)** where the entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more.

D. In the judgement passed in the case of ***Shambhu Nath Goyal vs. Bank of Baroda*** reported in ***(1983) 4 SCC 491 (5J)*** it has been held as under: -

“The rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under Section 10 or Section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service *must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it.*”

E. In the judgment passed by the Hon'ble Supreme Court in the case of ***Karnataka State Road Transport Corpn. Vs. Lakshmiddevamma and Anr.*** reported in ***(2001) 5 SCC 433 (5J)***, it has been held by a majority view that the right of the Management to lead evidence before Labour Court/Tribunal in justification of decision taken against the workman is not a statutory right but it is a procedure laid down by Supreme Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the parties. The Hon'ble Supreme Court has further approved the judgment passed in the case of ***Shambhu Nath Goyal vs. Bank of Baroda (supra)*** that the employer not having sought permission to prove the charge by leading evidence in its counter statement could not seek it after the finding had been given on preliminary issue.

F. Thus, the judgements relied upon by the petitioner are clearly distinguishable on facts and do not help the petitioner in any manner whatsoever. There is no legal bar in two simultaneous proceedings, one under section 33(2) (b) and another by virtue of reference under section 10 of the Act of 1947 but certainly if an issue is decided in one or the other proceedings after fullfledged evidence, the findings would be binding in the other proceedings. In the present case, except filing of petition under section 33(2) (b) of the Act of 1947 by the petitioner, there is no further progress in the matter. In such circumstances, there is no occasion to stay the proceedings in the Ref. Case No. 06 of 2021 awaiting decision of proceedings under section 33(2) (b) of the Act of 1947. The Labour Court has rightly refused to stay the proceedings of Ref. Case No. 06 of 2021 and rejected the petition filed by the petitioner.

24. In view of the aforesaid judgements and findings, this Court is of the considered view that the reference made by the respondent State vide

notification under Section 10(1) (c) and Section 10(2A) of the Act of 1947 with regards to legality and validity of order of dismissal of the respondent-workman is maintainable even when the case filed by the petitioner under section 33(2)(b) being Misc. Case No. 02 of 2021 is pending before the learned Industrial Tribunal. It has already been held above that pendency of Misc. Case No. 01 of 2021 filed by the respondent-workman under section 33A of the Act of 1947 has no bearing in the matter.

25. Thus, it is concluded that: -

I. The State Government was justified in referring the industrial dispute under Section 10(1) (c) and Section 10 (2A) of the Act of 1947 regarding dismissal of the respondent workman vide notification No. 1225 dated 22.10.2021 (Annexure-5) for adjudication by Labour Court, Ranchi resulting in institution of Ref. Case No. 06 of 2021, in spite of pendency of the two miscellaneous cases: -

- a. petition filed by the petitioner under section 33(2) (b) seeking approval of dismissal of the respondentworkman (Misc. Case No. 02 of 2021).
- b. petition filed by the respondent-workman under section 33A challenging the issuance of charge-sheet initiating disciplinary proceedings during the pendency of Ref. Case No. 01 of 2017 (Misc. Case No. 01 of 2021).

II. The Labour Court, Ranchi is justified in rejecting the petition praying to keep the proceedings in abeyance in Ref. Case No. 06 of 2021 till disposal of Misc. Case No. 02 of 2021 filed by the petitioner and Misc. Case No. 01 of 2021 filed by the respondent-workman, which were pending before Industrial Tribunal.

26. However, time granted by the learned Labour Court to file written statement by 04.07.2022 vide impugned order has expired; the present case was filed before this Court on 29.06.2022 and has remained pending. Accordingly, the time for filing written statement by the petitioner is extended till 30.06.2024, if not already filed.

27. Thus, this writ petition is accordingly dismissed, but with extension of time of filing written statement by the petitioner till 30.06.2024.

28. Pending I.A., if any, is closed.

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