Supreme Court of India Jaipur Zila Sahakari Bhoomi Vikas ... vs Ram Gopal Sharma & Ors on 17 January, 2002 Author: S.V.Patil Bench: S.P.Bharucha Cji, S.S.M.Quadri, Santosh N.Hegde, S.N.Variava, S.V.Patil CASE NO.: Appeal (civil) 87-88 of 1986

PETITIONER: JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK LTD.

RESPONDENT: RAM GOPAL SHARMA & ORS.

DATE OF JUDGMENT: 17/01/2002

BENCH: S.P.BHARUCHA CJI & S.S.M.QUADRI & SANTOSH N.HEGDE & S.N.VARIAVA & S.V.PATIL

JUDGMENT: JUDGMENT DELIVERED BY: S.V.PATIL,J. Shivaraj V. Patil J. From the Order of Reference made in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and another [(1994) 6 SCC 522], the question that arises for consideration is: "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?" Finding conflict of views expressed by Benches of three learned Judges of this court on the question, the Reference is made. The two Benches consisting of three learned Judges in (1) Strawboard Manufacturing Co. vs. Gobind [1962 Supp. (3) SCR 618] and (2) Tata Iron & Steel Co. Ltd. vs. S.N. Modak [1965 (3) SCR 411] have taken the view that if the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short 'the Act'), the order of dismissal becomes ineffective from the date it was passed and, therefore, the employee becomes entitled to wages from the date of dismissal to the date of disapproval of the application. Another Bench of three learned Judges in Punjab Beverages Pvt. Ltd., Chandirarh vs. Suresh Chand & Anr. [1978 (3) SCR 370] has expressed the contrary view that non-approval of the order of dismissal or failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative; failure to apply for approval under Section 33(2)(b) would only render the employer liable to punishment under Section 31 of the Act and the remedy of the employee is either by way of a complaint under Section 33A or by way of a reference under Section 10(1)(d) of the Act. It may be stated here itself that there was no reference in this decision to the two earlier decisions aforementioned. A Bench of two learned Judge in S.Ganapathi & Ors. vs. Air India & Anr. [JT 1993 (4) SC 10] has followed the view taken in Strawboard (supra) and Tata Iron & Steel Co. (supra) and has held that the order of dismissal passed without the approval under Section 33(2)(b) remains in inchoate condition but this decision has not noticed the decision in Punjab Beverages (supra). Rival submissions were made on behalf of the parties in support of the respective contentions in the light of aforementioned decisions and referring to and relying on the provisions contained in Sections 31, 33 and 33A of the Act. Answer to the question on which conflicting decisions are rendered, as noticed

above, depends on a fair reading and proper interpretation of Section 33(2)(b) of the Act. Prior to the amendment of 1956, provision contained in Section 33 corresponded to the present Section 33(1) only. The object behind enacting Section 33, as it stood before it was amended 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 unamended 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 authority. It appears, therefore, that Section 33 was amended in 1956 permitting the employer to make changes in conditions of service or to discharge or dismiss an employee in relation to matters not connected with the pending industrial dispute. At the same time, it seems to have been felt that there was need to provide some safeguards for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. This position is clear by reading re- drafted expanded Section 33 in 1956 containing five sub-sections. For the present purpose, we are concerned with the proviso to Section 33(2)(b). The material and relevant portion of Section 33 reads:- "Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings. – (1)..... (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing order, in accordance with the terms of the contract, whether express or implied, between him and the workman - (a) ..... (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." The proviso expressly and specifically states that no 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. It is clear from the proviso to Section 33(2)(b) that the employer may pass an order of dismissal or discharge and at the same time make an application for approval of the action taken by him. In the Strawboard case (supra) dealing with the contention that if the employer dismisses or discharges a workman and then applies for approval of the action taken and the tribunal refuses to approve the action, the workman would be left with no remedy as there is no provision for reinstatement in Section 33(2), it is held that "if the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer". A Constitution Bench

of this Court in the case of P.H. Kalyani vs. M/s. Air France Calcutta [1964 (2) SCR 104] referring to Strawboard has observed thus:- "The main point which was raised in this appeal is now concluded by the decision of this Court in the Straw Board Manufacturing Co. Limited, Saharanpur vs. Govind. This Court has held in that case that"the proviso to Section 33(2)(b) contemplates the three things mentioned therein, namely, (i) dismissal or discharge, (ii) payment of wages, and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction so that the employer when he takes the action under Section 33 (2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time. It was further held that "the employer's conduct should show that the three things contemplated under the proviso, are parts of the same transaction; and the question whether the application was made as part of the same transaction or at the same time when the action was taken would be a question of fact and will depend upon the circumstances of each case." In the case of Tata Iron and Steel Co. (supra) it is reiterated and stated thus:- "It is now well-settled that the requirements of the proviso have to be satisfied by the employer on the basis that they form part of the same transaction; and stated generally, the employer must either pay or offer the salary for one month to the employee before passing an order of his discharge or dismissal, and must apply to the specified authority for approval of his action at the same time, or within such reasonably short time thereafter as to form part of the same transaction. It is also settled that if approval is granted, it takes effect from the date of the order passed by the employer for which approval was sought. If approval is not granted, the order of dismissal or discharge passed by the employer is wholly invalid or inoperative, and the employee can legitimately claim to continue to be in the employment of the employer notwithstanding the order passed by him dismissing or discharging him. In other words, approval by the prescribed authority makes the order of discharge or dismissal effective; in the absence of approval, such an order is invalid and inoperative in law." In the same judgment, it is also stated that "order of dismissal or discharge being incomplete and inchoate until the approval is obtained, cannot effectively terminate the relationship of the employer and employee and that if the approval is not accorded by the tribunal, the employer would be bound to treat the respondent as its employee and paying his full wages for the period even though the employer may subsequently proceed to terminate the services of the respondent". Per contra, in Punjab Beverages (supra), it is held that an order dismissing the workman contravening Section 33(2)(b) shall not be void and inoperative and hence the workman was not entitled to maintain the application for determination and payment of wages under Section 33(C)(2); a workman can proceed under Section 33(C)(2) only after the tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman; rejecting a contention that the workman would be left without any remedy on the interpretation that contravention of Section 33 does not invalidate an order of discharge or dismissal,

it is stated that if the employer contravenes Section 33, he would be liable to punishment under Section 31(1) and moreover the aggrieved workman can act under Section 10 or he can make a complaint to the tribunal under Section 33A; it was held that the withdrawal of the application made under Section 33(2)(b) stands on the same footing as if no application thereunder has been made; if there was no decision on merit of the said application, it cannot be said that the approval has been refused by the Tribunal. The facts of the said case are: the workman was dismissed from service holding him guilty after inquiry by an order dated 23rd December, 1974. Since an industrial dispute was pending at that time, in view of the provisions contained in Section 33(2)(b), the employer approached the Industrial Tribunal at Chandigarh before which the industrial dispute was pending for approval of the action taken. However, that application was dismissed as withdrawn on 4th September, 1976. Then the workman demanded full wages from the employer from the date of his suspension till the date of demand contending that the action of the employer dismissing him from service was not approved by the Tribunal; he continued to be in service and was entitled to all the emoluments. Since the employer did not respond, he made an application to the Labour Court under Section 33(C)(2) for determination and payment of the amount of wages due to him. The employer resisted the said application inter alia on the ground that the application under Section 33(2)(b) having been withdrawn, the effect of which was as if no application had been made at all; even though there was contravention of Section 33(2)(b) in not making an application seeking approval, it did not render the order of dismissal void ab initio and it was merely illegal and unless it is set aside in an appropriate proceeding taken by the employee under Section 33A or in a reference under Section 10, the Labour Court had no jurisdiction under Section 33 (C)(2) to direct payment of wages to the first respondent on the basis as if he continued in service. The Labour Court rejected this contention and allowed the application of the workman filed under Section 33(C)(2). This Court, allowing the appeals by special leave, held that the employer contravened Section 33(2)(b) in dismissing the workman but such contravention did not have the effect of rendering the order of dismissal void or inoperative and hence the workman was not entitled to maintain the application under Section 33(C)(2). However, the amounts ordered to be paid by the Labour Court were treated as compensation instead of wages to meet the demands of social justice. The reasons recorded in taking such a view are: (i) Section 33 in both its limbs undoubtedly uses mandatory language and Section 31(1) makes it penal for the employer to commit a breach of the provisions of Section 33 and, therefore, if Section 33 stood alone, it might lend itself to the construction that any action by way of discharge or dismissal taken against workman would be void if it is in contravention of Section 33. But Section 33 cannot be read in isolation, for the intention of the Legislature has to be gathered not from the one provision but from the whole of the statute. If Sections 33 and 33A are read together, it is clear that legislative intent shall not invalidate an order of discharge or dismissal passed in contravention of Section 33 despite the mandatory language implied in the Section and the penal provision enacted in Section 31(1). (ii) The

mere contravention of Section 33 by the employer will not entitle the workman to an order of reinstatement because inquiry under Section 33A is not confined only to the determination as to the contravention of Section 33, but even if such contravention is proved, the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal. (iii) If the contravention of Section 33 were construed as having invalidating effect of the order of discharge or dismissal, Section 33A would be rendered meaningless and futile, because in that event the workman would invariably prefer to make an application straightaway under Section 33(C)(2) even before adjudication whether the order of discharge or dismissal is void and inoperative. (iv) The contention of the workman that in the absence of approval for action taken under Section 33(2)(b), the order of dismissal was inoperative, was rejected on the ground that withdrawal of the application made for approval stood on the same footing as if no application under Section 33(2)(b) has been made at all; since there was no application made under Section 33(2)(b), the Tribunal had no occasion to apply its mind to consider whether the dismissal of workman amounted to victimization or unfair labour practice. Hence, it was difficult to say that the approval has been refused by the Tribunal. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment under S.31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in other way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman

without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman. 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 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 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. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set

aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment. Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33A. There is nothing in Sections 31, 33 and 33A to suggest otherwise even reading them together in the context. These Sections are intended to serve different purposes. As already noticed above, the Constitution Bench of this Court in P.H. Kalyani vs. M/s. Air France Calcutta has referred to Strawboard Manufacturing Co. vs. Gobind and approved the view taken in the said decision as regards the requirements of the proviso to Section 33(2)(b). Unfortunately in Punjab Beverages Pvt. Ltd. vs. Suresh Chand, the earlier two cases of Strabboard and Tata Iron & Steel Co. were not noticed touching the question. It is true that in S.Ganapathi & others vs. Air India and another, there is no reference to Punjab Beverages. But the view taken in two earlier decisions of Strabboard and Tata Iron & Steel Co. is followed on the question and rightly so in our opinion. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of Strabboard and Tata Iron & Steel Co. and further state that the view expressed in Punjab Beverages on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly. In these appeals, respondent No. 1 was employed as Clerk-cum-Cashier with the appellant. He was dismissed from service. As certain proceedings were pending before the Industrial Tribunal, Jaipur, an application seeking approval of

the Tribunal for the said dismissal was submitted by the appellant before the Tribunal under Section 33(2)(b). The said application was contested on various grounds by the respondent including that the appellant-Bank had failed to comply with the provisions of Section 33(2)(b) as salary for one month was not paid. The Tribunal, on facts, found that the appellant failed to comply with the provisions of Section 33(2)(b) and in that view dismissed the application. The appellant challenged the order of the Tribunal before the High Court in writ petition No. 666 of 1980. The same was dismissed concurring with the order passed by the Tribunal. In the view we have taken, the contentions raised in these appeals do not help the appellant. We find no merit in these appeals. Consequently, these are dismissed. No costs.