

Supreme Court of India

Jaipur Zila Sanhakjari Bhoomi ... vs Ram Gopal Sharma on 18 August, 1993

Equivalent citations: 1994 SCC (6) 522, 1993 SCALE (4)693

Author: P Sawant

Bench: Sawant, P.B.

PETITIONER:

JAIPUR ZILA SANHAKJARI BHOOMI VIKASW BANK LTD.

Vs.

RESPONDENT:

RAM GOPAL SHARMA

DATE OF JUDGMENT 18/08/1993

BENCH:

SAWANT, P.B.

BENCH:

SAWANT, P.B.

YOGESHWAR DAYAL (J)

CITATION:

1994 SCC (6) 522

1993 SCALE (4)693

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. The questions which fall for consideration in the present appeals are as follows:

(1) What is the status of the order of dismissal and therefore of the dismissed employee between the date of the order of dismissal and the approval of dismissal under Section 33(2)(b) of the Industrial Disputes Act, 1947? (2) Does the employee become entitled to being treated as never to have been dismissed from service if the application filed by the employer under Section 33(2)(b) is not approved?

(3) Is the requirement of the approval under Section 33(2)(b) a mere technicality the non-compliance of which does not vitiate the order or is it a condition precedent to the order being rendered valid?

(4) Does the order of dismissal remain inchoate and is not effective till it is approved under Section 33(2)(b)?

2. We have heard learned counsel on both sides at considerable length. Various decisions were cited before us and we find that two Benches consisting of three learned Judges have taken the view that if the approval is not granted under Section 33(2)(b), 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. The decisions in which this view has been taken are *Strawboard Manufacturing Co. v. Gobind*¹ and *Tata Iron & Steel Co. Ltd. v. S.N. Modak*².

3. As against this, another Bench of three learned Judges in *Punjab Beverages (P) Ltd., Chandigarh v. Suresh Chand*³ has taken the view that the 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. The 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 33-A or by way of a reference under Section 10(1)(d) of the Act. There is no reference in this decision to the earlier two decisions of the Court cited above.

4. Recently, a Bench of two Judges, in a decision in *S. Ganapathy v. Air India*⁴ has followed the view taken by this Court in *Strawboard Manufacturing Co.* case¹ and *Tata Iron & Steel Co. Ltd.* case² and has held that the order of dismissal passed without the approval under Section 33(2)(b) remains in inchoate condition. This decision has in true not noticed the decision in *Punjab Beverages (P) Ltd.* case³. The point arises in a number of cases and in view of the conflicting decisions, presents difficulty to all the courts. It is therefore, necessary that the law on the subject is settled for future. We are, therefore, constrained to direct the Registry to place this matter before Hon'ble the Chief Justice for referring the same to a Bench of five Judges since the decisions in which the conflict arises, are all pronounced by a Bench of three learned Judges. The order of the dismissal in the present case is of 1974. At the request of the parties, we give liberty to them to approach Hon'ble the Chief Justice to constitute the Bench at his early convenience. 1 1962 Supp (3) SCR 618: AIR 1962 SC 1500: (1962) 1 LLJ 420 2 (1965) 3 SCR 411 : AIR 1966 SC 380: (1965) 2 LLJ 128 3 3 (1978) 2 SCC 144: 1978 SCC (L&S) 165 :(1978) 3 SCR 370 4 4 (1993) 3 SCC 429: 1993 SCC (L&S) 796: JT (1993) 4 SC 10