

RAJASTHAN STATE ROAD TRANSPORT CORPORATION
AND ANOTHER

v.

SATYA PRAKASH
(Civil Appeal No. 4560 of 2008)

APRIL 9, 2013

[H.L. GOKHALE AND RANJAN GOGOI, JJ]

INDUSTRIAL DISPUTES ACT, 1947:

s. 33-A read with s.33 - Complaint by a daily wager - bus conductor who had been dismissed from service after an inquiry - Industrial Tribunal holding the charge proved, but directing reinstatement of workman without back wages - Held: When 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 - Single Judge as well as the Division Bench of High Court have fallen in the same error in upholding the order of Tribunal - The complaint ought to have been dismissed - Judgments of High Court as also award of Tribunal, except as mentioned in the judgment, are set aside - Consequently the complaint shall stand dismissed.

ss.33 and 33-A - Nature and scope of Explained - Held: Once the Complaint u/s 33A is decided, there is no question of granting any liberty to apply u/s 33 of the Act.

The respondent, working as a bus conductor on daily wages, was found to have collected fare from passengers but had not issued tickets to some of them. A departmental inquiry was conducted against him wherein he did not participate. The charge was found proved and the respondent was dismissed from service. He filed a civil suit. The trial court recorded a finding

A against him but dismissed the suit for want of territorial jurisdiction. Thereafter, the respondent filed a complaint before the Industrial Tribunal u/s s.33-A of the Industrial Disputes Act, 1947. The Tribunal also found the charge to have been proved, but held that provisions of
 B s.33(2)(b) of the Act had not been complied with and directed reinstatement of the respondent, without back wages but with continuity of service. The single Judge of the High Court in writ petition as also the Division Bench in writ appeal declined to interfere.

C Allowing the appeal, the Court

HELD: 1.1 Section 33A of the Industrial Disputes Act, 1947 was enacted to make a special provision for adjudication as to whether s.33 has been contravened.
 D This section enables an employee aggrieved by such contravention to make a complaint in writing in the prescribed manner to the tribunal. Sub-s. (b) of s.33A clearly lays down that when such a complaint is made, the Tribunal shall adjudicate upon the complaint as if it
 E were a dispute referred to it, in accordance with the provisions of the Act and shall submit the award to the appropriate Government, and the provisions of this Act shall apply accordingly. Thus, by this section the aggrieved employee is given a right to move the tribunal
 F and to prove his case on merits, without having to take recourse to s.10 of the Act. [para 15-16] [952-G; 953-C-D]

1.2 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
 G held that the charge against the respondent was proved. This finding is not disturbed by the High Court. The civil court has also given the same finding which was not challenged by the respondent. Both these proceedings were initiated by the respondent/workman and resulted

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into a decision against him on merits. The decision of the civil court was however not placed before the Industrial Tribunal either by the respondent or by the appellant. The respondent worked only for 5 months as a daily wager. 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 s.33 (2) (b) of the Act. The Single Judge as well as the Division Bench of the High Court have fallen in the same error in upholding the order of the Tribunal. It is made clear that once the complaint u/s 33A is decided, there is no question of granting any liberty to apply u/s 33 of the Act. [para 10, 19 and 20] [949-G-H; 950-A-B; 954-G-H; 955-A-B, D-E]

Punjab National Bank Ltd. vs. All India Punjab National Bank Employees Federation & Anr. AIR 1960 SC 160 ; *Delhi Cloth and General Mills Co. Ltd. vs. Rameshwar Dayal* 1961 SCR 590 = AIR 1961 SC 689; *P.H. Kalyani vs. M/s. Air France Calcutta* AIR 1964 SCR 104 = 1963 SC 1756; and *Lalla Ram vs. D.C.M. Chemicals Works Ltd.* 1978 (3) SCR 82 = 978 (3) SCC 1 - relied on.

Karimbhai 1977(2) SCR 932 = 1977 (2) SCC 350; *United Bank of India vs. Sidhartha Chakraborty* 2007 (9) SCR 498 = 2007 (7) SCC 670; *Jaipur Zila Sah. Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma & Ors.* 2002 (1) SCR 284 = 2002(2) SCC 244; *Bhavnagar Municipality vs. Alibhai Karimbhai* 1977(2) SCR 932; 1977 (2) SCC 350; *United Bank of India vs. Sidhartha Chakraborty* 2007 (9) SCR 498 = 2007 (7) SCC 670; *Straw Board Mfgc co. Ltd. Saharanpur vs. Govind* 1962 (3) Suppl. SCR 618 = 1962 AIR 1500; *Tata*

A *Iron & Steel Co. Ltd. Tisco vs S.N. Modak* 1965 (3) SCR 411= 1966 AIR 380; *Punjab Beverages Pvt. Ltd. Chandigarh .Vs. Suresh Chand* 1978 (3) SCR 370 = 1978 (2) SCC 144 - referred to.

B 1.3 It is true that the appellant had not applied for the necessary approval as required u/s 33. That is why complaint was filed by the respondent u/s 33A of the Act, which was adjudicated like a reference, as required by the statute, and the misconduct having been held to have been proved, thereafter there is no question to hold that
C 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. [para 19] [955-A-C]

D 1.4 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
E 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
F was an allegation of misconduct, they afforded him an opportunity to explain, but he did not attend the inquiry. This led to his dismissal from service. When the respondent filed the complaint u/s 33A, the Industrial Tribunal also returned the finding that the appellant had
G 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 dismissal order passed by the appellant. [para 21] [955-G-H; 956-A-B & C-D]

H 1.5 The judgments of the High Court as also the

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judgment of the Industrial Tribunal, except as mentioned in the instant judgment, are set aside. Consequently, the complaint shall stand dismissed. [para 22] [956-E-F] A

Case Law Reference:

2002 (1) SCR 284	referred to	para 7	B
1977(2) SCR 932	referred to	para 8	
2007 (9) SCR 498	referred to	para 8	
1962 (3) Suppl. SCR 618	referred to	para 11	C
1965 (3) SCR 411	referred to	para 11	
1978 (3) SCR 370	referred to	para 11	
AIR 1960 SC 160	relied on	para 15	D
1961 SCR 590	relied on	para 17	
1964 SCR 104	relied on	para 17	
1978 (3) SCR 82	relied on	para 18	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4560 of 2008. E

From the Judgment and Order dated 21.10.2005 of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in D.B. Special Appeal (Writ) No. 1093 of 2005. F

Puneet Jain, Anurag Gohil, Sushil Kumar Jain for the Appellants.

Shovan Mishra, Mukul Kumar for the Respondent. G

The Judgment of the Court was delivered by

H.L. GOKHALE J. 1. 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 H

- A (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.

- C 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,

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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.

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

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A 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
 B 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
 C 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
 D 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
 E 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
 F 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
 G 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.
 H Therefore, at the end of paragraph 9 of the award the Tribunal
 concluded in the following words:-

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"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."

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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:-

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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

A 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
 B 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*,
 C 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
 D 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
 E 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
 F 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
 G 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
 H dated 24.11.1994, which is not challenged by the respondent.

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Both these proceedings were initiated by the respondent/ workman and resulted into a decision against him on merit. The decision of the Civil Court 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

A 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 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.

F 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.

H 14. Having noted this, what is observed by this Court in

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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

A for the breach of Section 33. This Section 33A reads as follows:-

B **"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,-

C (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

D (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."

F (emphasis supplied)

G 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.

H 16. The purpose behind enacting Section 33A and the scope thereof was succinctly explained by Gajendrakar J (as

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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

A **whether the alleged contravention by the employer
of the provisions of S. 33 has been proved or not."**

(emphasis supplied)

B 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.

C 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
D 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
E the misconduct, the order of dismissal will become ineffective
from the date when the dismissal order was passed by the
employee. This legal 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
F 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.

G 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
H respondent on the basis that initially the appellant had

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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

A 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
B 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
C 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
D 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
E 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,
F 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
G 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.

H R.P.

Appeal allowed.