IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 2980 of 2023

Decided on: 03.04.2025

Yog Raj … Petitioner

Versus

M/s HFCL Limited … Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?[1] *Yes*

For the petitioner : Mr. Rahul Mahajan, Advocate.

For the respondent : Mr. Vikas Chauhan, Advocate.

Ajay Mohan Goel, Judge *(Oral)*

By way of this writ petition, the petitioner has challenged the award dated 01.11.2022, passed by learned Presiding Judge, Labour Court, Shimla, in application 82 of 2020, titled as Yog Raj vs. M/s HFCL Limited, in terms whereof, though the complaint filed by the petitioner under Section 33-A of the Industrial Disputes Act was allowed by the learned Labour Court but by erroneously holding that there was loss of confidence between the employer and the employee, learned Labour Court rather than ordering reinstatement of the petitioner, ordered payment of lump sum compensation of Rs. 4.00 Lac in lieu of reinstatement, back wages and other consequential service benefits.

2. Brief facts necessary of the adjudication of this writ

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

petition are that two References were pending before the learned Labour Court, i.e. Reference No. 138 of 2019 and Reference No. 141 of 2019 when the petitioner was dismissed from service by the respondent on 17.07.2020 vide letter dated 14.07.2020. This was followed by filing of an application under Section 33(2)(B) of the Industrial Disputes Act by the Company before the learned Labour Court on 22.07.2020 seeking ratification of its act of dismissing the services of the petitioner, which as per the Company was done after holding due enquiry.

3. Feeling aggrieved by the order of dismissal of services, the petitioner also preferred an application/complaint under Section 33-A of the Industrial Disputes Act before the learned Labour Court on 12.10.2020 alleging therein that as the employer had changed the service conditions of the petitioner during the pendency of the reference petitions, without adhering to the statutory provisions of the Industrial Disputes Act, the impugned act of the employer was bad.

4. To cut the controversy short, the petition filed by the employer under Section 33(2)(b) of the Industrial Disputes Act was dismissed by learned Labour Court in terms of order Annexure P-6, dated 01.11.2022. While dismissing said application filed by the employer, learned Labour Court held that the Company had

miserably failed to prove its case beyond preponderance of probabilities and had failed to justify its act of dismissing the services of the petitioner on the grounds assigned in the application. Learned Labour Court further held that the petitioner was a protected worker and employer was not able to justify the application filed by it under Section 33(2)(b) of the Industrial Disputes Act so as to persuade the Court to grant necessary approval.

5. It is a matter of record that this order has attained finality as the same has not been assailed by the employer.

6. Coming back to the order under challenge, after holding that the complaint filed under Section 33-A of the Industrial Disputes Act by the petitioner was a valid complaint and indeed there was a change in service conditions of the petitioner, firstly by issuing transfer order dated 27.07.2019 and thereafter dismissing him from service on 17.07.2020, as already observed hereinabove, learned Labour Court granted lump sum compensation in favour of the petitioner instead of reinstatement with consequential benefits.

7. Feeling aggrieved, the petitioner has filed this writ petition.

8. Learned Counsel for the petitioner has vehemently argued that after learned Labour Court came to conclusion that

there was an arbitrary change in the service conditions of the petitioner by the employer and further learned Labour Court was pleased to dismiss the application filed under Section 33(2)(B) of the Industrial Disputes Act, the act of the learned Labour Court of not ordering the reinstatement of the petitioner from the date of illegal dismissal is *per se* bad. Learned Counsel submitted that once the application filed under Section 33(2)(b) of the Industrial Disputes Act was dismissed and complaint filed under Section 33-A of the Industrial Disputes Act was allowed, consequences were to ensue, which entail that the dismissal once being held to be bad, automatically relegated the workman to the position where he was before the passing of the impugned order. Meaning thereby that for all intents and purposes, he was deemed to be in service of the employer continuously, with all consequential service benefits. Learned Counsel further submitted that the findings returned by learned Labour Court about the loss in confidence are *per se* bad and not sustainable for the reason that neither there was any such pleading on behalf of the employer nor any material was placed by the employer to prove that indeed there was any loss of faith and confidence between the petitioner and company.

9. Learned Counsel thus submitted that as these findings are beyond pleadings, based on whims and conjectures of the

learned Judge concerned, therefore, the award under challenge be set aside to said extent and the petitioner be ordered to be in deemed service of the respondent as from the date of his illegal dismissal with all consequential benefits.

10. On the other hand, learned Counsel for the respondent submitted that though it is a matter of record that the Company has not assailed the order passed by the learned Labour Court in the application filed under Section 33(2)(b) of the Industrial Disputes Act, yet, the dismissal of the service of the petitioner was after holding a due enquiry and the findings returned by the learned Labour Court to the contrary are incorrect. He further submitted that the petitioner is not entitled for reinstatement from the date of his dismissal and in fact, he is not entitled to the compensation, as has been awarded by the learned Labour Court. He therefore, prayed that the writ petition be dismissed by passing appropriate orders.

11. I have heard learned Counsel for the parties and also carefully gone through the award under challenge as well as other documents appended with the petition.

12. At the cost of repetition, this Court states that as the award passed by learned Labour Court in terms whereof the application filed by the employer under Section 33(2)(b) of the Industrial Disputes Act was dismissed has attained finality,

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therefore, this Court is not dwelling on the issue with regard to the validity of the dismissal of petitioner from service because that is settled issue now in favour of the petitioner to the effect that his dismissal was bad in law.

13. Therefore, the only moot issue before this Court is as to whether the award passed by learned Labour Court of disallowing reengagement and awarding compensation in lieu thereof is sustainable in the eyes of law or not?

14. To justify its award of grant of lump sum compensation in lieu of reinstatement, back wages and other consequential service benefits, learned Labour Court has returned the following findings:-

> *"33. The present one is a glaring example of the loss of confidence reposed by the employer in the complainant. According to the employer, the complainant had indulged in nefarious activities by filing a complaint in writing with the Department of Industries, Solan, to cancel its unit at Chambaghat. It is argued that since the complainant and other co-workers are involved in the activities against the company policy, hence, the company has lost faith and confidence in him. It is a matter of common parlance that the mutual trust confidence and faith are certain factors, which are sine-qua-non to build a strong and harmonious relationship between the employer and employee. Once the*

employer had shown its loss of confidence, faith and trust in the employee, it cannot be said that a worker, who is not trustworthy and confidential against the management policy is a fit person to be retained or ordered to be re-instated. The mutual trust, confidence and faith are backbone of good, peaceful and healthy relationship between the employer and employee. Once the mutual trust, confidence and faith are broken either by way of unfair labour practice adopted by the workers or management as provided in part-I and II of Fifth Schedule annexed with the Act, then it would be in the fitness of things and interest of justice by ordering the parties to parting with or drifting away with a golden handshake, if in case the parties are not willing to do so out of their own, then a duty cast upon this Tribunal to pass an appropriate order, keeping in view the attendant facts, circumstances an i evidence on record."

15. Hon'ble Supreme Court of India in **Kanhiyalal Agarwal and others** vs. **Factory Manager, Gwalior Sugar Company Ltd** and another connected matter, (2001) 9 Supreme Court Cases 609, while dealing with the issue of loss of confidence of employer in employee and essential ingredients required to prove the same has been pleased to hold as under:-

"9. Substantial contention on the merits of the case by the

employer in a these appeals is that the finding of loss of confidence in the employee by the Labour Court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which result in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on the ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost."

16. Thus a bare reading of the judgment of Hon'ble Supreme Court demonstrates that the findings with regard to the loss of confidence in an employee can be returned by the learned Labour Court provided it is pleaded and proved by the employer that (a) the workman is holding a position of trust and confidence; (b) by

abusing such position, he commits acts which result in forfeiting the same; (c) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental of the discipline or security of the establishment.

17. On a query put to learned Counsel for the respondent, he fairly submitted that there was no such pleading by the employer in the proceedings before the learned Labour Court that there was any loss of confidence in the employee.

18. But natural, because there was no such pleading that there was a loss of confidence in the employee, there was no question of there being any evidence led by the employee to prove this fact. This means that findings returned by learned Labour Court qua loss of confidence intra the employer and the employee are san any pleadings and are based on whims and fancies of the learned Judge, which is not permissible in law.

19. The Court is a slave of pleadings and adjudication has to be within the ambit of the pleadings of the parties and the evidence which is led by the parties to substantiate the pleadings.

20. Conclusions cannot be drawn by the Court in air on its own whims and fancies without taking into consideration the respective contentions and stand of the parties.

21. Herein, when it was not the case of the employer that

there was loss of faith intra the employer and the employee, there was no occasion for learned Labour Court to have given sermons on the purported loss of confidence between the petitioner and the employer and also hold so, as has been done. Therefore, the findings returned to this effect by learned Labour Court are perverse, bad, beyond the pleadings and not sustainable in law.

22. At this stage, this Court would like to refer to a five Judge Bench judgment of Hon'ble Supreme Court of India, in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.** vs. **Ram Gopal Sharma and others**, (2002) 2 Supreme Court Cases 244, in which the following question was referred for answer to the Larger Bench:-

> *"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?"*

23. This question was answered by Hon'ble Five Judge Bench of Supreme Court in the following terms:-

> *"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 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."

24. A perusal of the judgment of the Hon'ble Supreme Court demonstrates that in terms thereof, it is apparent that if the approval sought by the employer under Section 33(2)(b) of the

Industrial Disputes Act is not granted by the learned Labour Court, then nothing more is required to be done by the employee as it will have to be deemed that the order of discharge or dismissal was never passed and consequence of it is that the employee is deemed to be in continuous service, entitling him all the benefits.

25. Same view was taken by Hon'ble Supreme Court earlier also in **T.N. State Transport Corporation** vs. **Neethivilangan, Kumbakonam**, (2001) 9 Supreme Court Cases 99, relevant portion of which reads as under:-

> *"16. From the conspectus of the views taken in the decisions referred to above the position is manifest that while the employer has the discretion to initiate a departmental inquiry and pass an order of dismissal or discharge against the workman the order remains in an inchoate state till the employer obtains order of approval from the Tribunal. By passing the order of discharge or dismissal de facto relationship of employer and employee may be ended but not the de jure relationship for that could happen only when the Tribunal accords its approval. The relationship of employer and employee is not legally terminated till approval of discharge or dismissal is given by the Tribunal. In a case where the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition filed*

under section 33(2)(b) of the Act on merit the employer is bound to treat the employee as continuing in service and give him all the consequential benefits. If the employer refuses to grant the benefits to the employer the latter is entitled to have his right enforced by filing a petition under Article 226 of the Constitution. There is no rational basis for holding that even after the order of dismissal or discharge has been rendered invalid on the Tribunals rejection of the prayer for approval the workman should suffer the consequences of such invalid order of dismissal or discharge till the matter is decided by the Tribunal again in an industrial dispute. Accepting this contention would render the bar contained in section 33(1) irrelevant. In the present case as noted earlier the Tribunal on consideration of the matter held that the employer had failed to establish a prima facie case for dismissal/discharge of the workman, and therefore, dismissed the application filed by the employer on merit. The inevitable consequence of this would be that the employer was duty bound to treat the employee as continuing in service and pay him his wages for the period, even though he may be subsequently placed under suspension and an enquiry initiated against him."

26. Therefore, as this Court has already held that learned Labour Court erred in holding that there was loss of confidence

between the petitioner and the employer in the absence of any such case being put forth by the employer, therefore, as a natural consequence thereof, the payment of lump sum compensation of Rs.4.00 Lac in lieu of reinstatement, back-wages and other consequential service benefits, is not sustainable in the eyes of law. This writ petition is accordingly allowed by striking off the findings returned in para-33 by the learned Labour Court in its award dated 01.11.2022 and modifying the relief clause by ordering that the petitioner is deemed to have continued in service as from the date of his illegal dismissal, entitling him to all benefits available, monetary and otherwise.

The petition stands disposed of in above terms. Let the petitioner be re-engaged forthwith. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

April 03, 2025
(*narender*)