

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT,
JABALPUR**

NO. CGIT/LC/A/1/2019

Present: P.K.Srivastava
H.J.S..(Retd)

Shri Shiv Prasad Raikwar
General Secretary
Vishwavidyalaya Kamgar Union
Padmakar School Gate
Namak Mandi,Katra Bazaar,
Sagar(M.P.)

Representing:Deepak Dubey
Applicant

Versus

Mr.Rakesh Mohan Joshi,
Registrar,
Dr. Hari Singh Gaur vishwavidyalaya,
(Central University)
Sagar(M.P.)470003.

Respondent

ORDER

(Passed on this 9th day of November-2022)

1. The Workman Union through its Secretary has filed this petition under Section 33(A) of the Industrial Disputes Act, hereinafter referred to by the word "Act", with a case that the applicant Union approached this Tribunal by way of reference dated 13-11-2018 referred for adjudication before this Tribunal as to whether the workman is entitled for classification and regarding the validity of order of is termination dated 25-10-2017. The workman union raised a dispute vide application dated 11-10-2017 being aggrieved by the unfair labour practice adopted by the Management. Notice was sent by Conciliation Officer on the dispute to the Management and was served on Management accordingly. It is further the case of the Workman Union that after service of notice by concerned Assistant Labour Commissioner, the Management issued a termination letter to all of its Head

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of the Department and directed that employees discharging duties on out sourcing basis be terminated forthwith. The applicant workman who was discharging his duties on daily wage basis was also terminated by the Management. According to the Workman Union, the retrenchment and termination of the services of the workman w.e.f. 25-10-2017 is in violation of Principles of Natural Justice as well as Section 33 A of the Act because it is alteration in service conditions of the applicant workman to prejudice during the pendency of the Industrial Dispute before the appropriate Government. Accordingly, it has been prayed that holding the Registrar of Dr. Hari Singh Gaur Vishwavidyalaya having committed violation of Section 33A of the Act, his prosecution be initiated accordingly.

2. Affidavit has been filed in support.

3. In its reply, the Management has taken a case that certain persons were engaged through out-sourcing by the Management of the University, in accordance with the exigency of work. The applicant workman is also one of them. He was not engaged against any vacant and sanctioned post following any recruitment process, rather his engagement was on contract basis directly by the concerned Department. The Tenure of this workman has been extended from time to time, either for 59 days or 89 days . The University took a decision in August-2017 not to extend the engagement of any such workmen beyond 30-8-2017 and a letter was circulated to every Department by the Registrar. Vide letter of Registrar dated 22-8-2017, the Heads of the Department have been intimated to take work only from employees engaged on contract basis directly by the concerned department only upto 29-8-2017 and not beyond that . Thereafter, an another order was issued on 25-10-2017 directing all the Heads of the Department against recommendation of extension of any employee engaged on contract basis directly by the Department. Thus according to the Management, it took a conscious policy decision to disengage workmen in the month of August-2017 itself. The dispute was raised by the workman only on 11-10-2017, hence there is no violation of Section 33A of the Act. Affidavit has been filed in support.

4. The Workman Union has filed affidavit of the applicant workman as his examination in chief. He has reiterated his case as mentioned above in

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the petition. The workman Union has further filed as many as nine photocopy documents which are application dated 11-10-2017 filed before the Assistant Labour Commissioner(C) raising the dispute. Notice dated 18-10-2017 sent by Assistant Labour Commissioner to Management in response of the petition before the Assistant Labour Commissioner, the application along with a list filed by the Workman Union before Assistant Labour Commissioner, application by workman Union before Registrar filed on 26-10-2017 informing him that the workman Union has raised a dispute before Assistant Labour Commissioner and a notice to the dispute has been served on the University on 20-10-2017, hence any alteration in service condition of the workman is in violation of Section 33A of the Act. It is also stated that the workmen are not outsourced employees , rather they have been directly appointed by the respective departments, Petition under Section 33 and 33A of the Act filed on 17-11-2017 before Assistant Labour Commissioner , failure of conciliation report dated 18-5-2018, Notesheet for payment till 31-10-2017 to the applicant workman and 16 other co-workmen.

5. The Workman Union has further filed as many as 21 RTI documents regarding proof of direct payment to the workman from the University and also showing that notice of dispute was served on University only on 20-10-2017.

6. The Management has not filed affidavit of any of its witness.

7. I have heard arguments of Mr. Uttam Maheshwari, learned counsel for the workmen and Shri Rahul Tripathi for the Management.

8. Before entering into any discussion, Section 33A of the Act requires to reproduced and is being reproduced as follows:-

33A. 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 5[before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention, may make a complaint in writing,5[in the prescribed manner,—



[Signature]

(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.

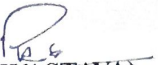
9. The facts are almost undisputed in the case in hand. According to the workmen Union, when they raised a dispute before the Assistant Labour Commissioner, they came to know that their services might be terminated against law. The Assistant Labour Commissioner sent notice with respect to dispute which was admittedly served on 20-10-2017. This fact is supported from the RTI documents also filed on record. The services were terminated from 25-10-2017 is also not disputed. The arguments of learned counsel for the Management is that a policy decision regarding not extending the services of outsourced employees was taken on 30-8-2017 and 20-9-2017 itself which was before the date of raising dispute before the Assistant Labour Commissioner. Learned Counsel for workmen Union has submitted that the decision was with respect to outsourced employees in the case in hand. The applicant workmen are employees appointed by the University through its department itself and not kept on outsourced. Hence, that decision had no relation with termination of service of the applicant workman. The RTI documents amply show that the payments were made to the workmen directly by the University and not through outsourced agency. The Management has nowhere disclosed as to through which outsourced agency the applicant workmen were engaged. This non-disclosure bears significance in the light of the fact that case of the workmen Union is that the applicant workmen are daily wage/muster roll employees appointed by the University through its department and there is uncontroverted affidavit in support corroborated by RTI documents. Hence, the aforesaid arguments of the learned counsel for the Management is held without any merit from the evidence on record. It is established that the services of the applicant workman whose cases has been espoused by the Workman Union were



terminated during the pendency of Industrial Dispute before Competent Authority which is in violation of Section 33A of the Act.

10. The Petition stands disposed of accordingly.

11. Let a copy of this order be sent to the appropriate Government.


(P.K.SRIVASTAVA)
PRESIDING OFFICER

DATE: 9-11-2022.

