Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ID. NO. 21/2021

Date of Passing of Award- 3rd July, 2023.

Between:

1. Sh. Nayan Phawa,
   R/o 2/1C, Pocket-B, Phase-III,
   Ashok Vihar, New Delhi-110052.

2. Mayank Malik,
   R/o BW 74C Shalimar Bagh, New Delhi-110088

Applicants / Claimants

Versus

1. Deutsche Lufthansa AG,
   2nd Floor, Novotel Puliman Hotel,
   Commercial block, Asset No. 02, Delhi Aerocity,
   G.M.R Hospitality District, I.G.I Airport New Delhi-110037.

2. Namita Chowdhary Head-Human Resources,
   South Asia, Del B/NR-H Shared Services International India Pvt. Ltd.
   Novotel Pullman Hotel, Commercial block Aerocity,
   New Delhi-110037.

3. Florian Hoser, Head of Corporate & Business Functions,
   Regional Management South Asia, Shared Services,

International India Pvt. Ltd. Novotel Pullman Hotel,
Commercial Block Aerocity, New Delhi-110037.

Managements

Appearances:-
Sh. Mohan Bir Singh, Ld. A/R for the workmen.
Sh. Anil Bhatt, Ld.A/R for the management.

Award

This award shall dispose of a compliant/application filed by the workmen Mayank Malik and others under section 33A of the Industrial Dispute Act, 1947 (in short The Act) with the averment that the workmen as per the list Annexed to this award (originally 25 in number) were employed by the mgt no.1 as Cabin Crew and separate letter of appointment was issued to the individual workmen. They are the members of the Lufthansa Cabin Crew Association. With regard to their service condition, the Association had submitted a charter of demands to the Mgt. On failure of a mutual agreement on the same, a conciliation proceeding was initiated before the Labour Commissioner. After discussion on several rounds the conciliation failed and the appropriate Govt. referred the matter to Central Govt. Industrial Tribunal New Delhi by order dated 22.01.2018 for adjudication in terms of the reference. That dispute is pending before this Tribunal as ID NO. 05/2018. Pending adjudication of that dispute, the mgt terminated the service of these petitioners on 02.02.2021, having knowledge that these applicants are connected with the Industrial Dispute pending as Id no. 05/2018. While terminating their services, the mgt though directed that the order of termination shall take immediate effect, failed to comply with the mandatory provisions of the ID Act mentioned in chapter V A and V B of the ID Act. Thereby, the mgt grossly violated the provisions of section 33 of the ID Act. Being aggrieved the applicants filed present application praying inter-alia to quash the order of termination dated

02.02.2021 issued in respect of the individual complainant/ Applicant. The stand taken by the Applicants is that the action of the mgt in terminating their service during the pendency of industrial Dispute in which the claimants are connected is illegal for violation of the condition of section 33 of the ID Act and amounts of unfair labour practice.

The complaint has been resisted by the Mgt no.1 by filing a written. The preliminary objection taken is that section 33A of the Act is attracted only in such cases where the termination of service of the workmen is punitive and is founded on an act of misconduct. In this case, the crew members have not been dismissed from service for committing an act of misconduct. In the termination letter it has been clearly mentioned that the service of the crew members, who were appointed on a fixed term contract is being terminated in terms of clause 1 of their contract, on payment of one month salary in lieu of a notice along with other contractual and statutory dues. The termination was done as a last resort, since the mgt, for substantial loss suffered in it's business post covid 19 pandemic, is not able to maintain the large contingent of India based flight attendance any further. Prior to the said termination the mgt no.1 had exhausted all it's resources to ensure their job security. In fact, the mgt and the union had agreed that the crew members will go on unpaid leave, because the flights were grounded. However, the same did not fructify because of some issues within the union. This left the mgt with no option than terminating the service of the fixed term employees which was done in strict compliance of the terms of their employment. The other stands taken by the mgt is that there is no nexus between the proceeding ID 05/2018 pending before this Tribunal and the action of termination, since the termination took place for a different reason entirely. With reference to Id no 05/2018, the mgt has taken a stand that in that proceeding issues have already been farmed including the issue relating to maintainability. Unless and until that proceeding is held to be maintainable as an Industrial Dispute the present application filed under section 33A of the Act is not maintainable.

The other objection taken is that section 33A of the ID Act is a special provision gibing a right to a workman for adjudication as to whether condition of service etc. are changed during the pendency of the proceeding by the employer and the same amounts to contravention of the provisions of section 33 of the Id Act. But in this case, the complaint was filed by two of the Cabin Crew namely Mr. Nayan Pahwa and Mr. Mayank Malik on behalf of 25 cabin crew members whose names are mentioned in annexure A of the complaint. But the complainants have failed to place on record any authorization letter/resolution through which Mr. Nayan Pahwa and Mr. Mayank Malik have been authorized to represent the remaining 23 terminated crew members. The complaint petition does not bear the signature of the crew members terminated. In total 102 crew members were terminated by order dated 02.02.2021 and 31 of them entered into a settlement with the mgt. Thus the mgt has taken a stand that the order terminating the fixed term employment of the cabin crew has nothing to do with the dispute pending as ID No. 05/2018 and the action of termination not being punitive in nature, the allegation that the provisions of section 33(2(b) of the ID Act has been contravened is unfounded. It has also been pleaded by the mgt that on an earlier occasion a similar application was filed by some terminatied cabin crew members and this Tribunal while disposing the application by order dated 11.12.2018, concluded that the employees could not establish the illegality of the Act and punitive nature of the Act for proving contravention of section 33 of the ID Act since their fixed term contracts were not renewed by the mgt. With such assertions the mgt has pleaded for rejection of the complaint as not tenable.

The workmen field rejoinder stating that all the 23 dismissed cabin crew have authorized Nayan Pahwa and Mayank Malik to represent them in this proceeding. There is no such rule or procedure that the complaint is to be filed by the individual workman. All the complainants had given authorization letter in favor of Nayan Pahwa and Mayank Malik and subsequently issued individual confirmation letter which have been placed on record. Initially 25 cabin crew had

joined in this proceeding but subsequently five of them resolved their grievance with the mgt and wished not to pursue a complaint. It has been stated that the word punishment has nowhere been defined under the ID Act. In such a situation, the term is to be understood as used in common parlance. In Black's law dictionary punishment has been explained as a sanction- such as, fine, penalty, conferment, or loss of property, right, or privilege- assessed against a person who has violated the law. The Hon'ble Supreme Court in different decisions have held that termination of service, whether by dismissal or discharge is the highest punishment. In this case, all the workmen had worked continuously for the mgt for a prolonged period starting from 2007 onwards. Each of them had worked for 240 days or more in the preceding calendar year of the date of termination. All the complaints of this proceeding are the members of the Lufthansa cabin crew association. Through the said union, they had submitted a charter of demand to the mgt. No amicable decision could be arrived at in spite of several rounds of discussion and thus a dispute was raised before the conciliation officer. On failure of conciliation, the dispute has been referred to this Tribunal for adjudication on the legality and justification of the demand. Thus, the complainants of this proceeding are connected with the Industrial Dispute pending as ID 05/2018. While the matter stood thus, the mgt had called upon the workmen to accept a proposal to the effect that they would remain as employees of the mgt, but proceed on unpaid leave for a period two years. This proposal of the mgt was rejected by the workmen and in retaliation thereof, the mgt terminated the service of the India based cabin crews. Thus, there is an incontrovertible connection between the disobedience of the mgt's order and termination of the service of the workmen which is nothing but a punishment of dismissal from service. Before such termination the mgt never complied with the provisions of section 33 (2(b) of the ID Act and for such non compliance, the action of the mgt becomes nonest and liable to be set aside. While denying that the fixed term employment was discontinued, the complainants have stated that the individual workman of this proceeding had served for the mgt for a period

exceeding 10.15 years and it is admitted that the provisions of chapter V A and V B were not complied.

On these rival pleadings the following issues were framed.

Issues

1. Whether the complaint filed u/s 33A of the ID Act is maintainable.
2. Whether the cause of the claimants was properly espoused.
3. Whether the employer i.e. the opposite parties during the pendency of a labour dispute changed the service condition of the claimant by terminating their services having knowledge that the workmen are connected with the Industrial dispute pending.
4. To what relief the claimants are entitled to.

On behalf of the claimants the General Secretary of Union Ms. Shalini Sharma testified as WW1 and Mr. Mayank Malik testified as WW2. They also proved documents marked as WW1/1 (colly) and WW2/1 (Colly). Simililarly, the mgt examined Mrs. Namita Chaudhary, Head, Human Resources, South Asia of Respondent no.1 as MW1. She also proved some documents in a series of MW1/1 to MW1/5 (colly).

The witnesses examined on behalf of the claimants stated that 25 cabin crew whose services were terminated, by authorizing Nayan Pahwa and Mayank Malik, had filed the present application. Out of them 8 including Nayan Pahwa settled the dispute with the mgt and currently 17 of them are pursing the matter. Both the witnesses have stated in clear terms that they are connected with ID no. 05/2018 as that is a proceeding rating to general demand and service condition of the cabin crews. The mgt had sufficient knowledge about the pendency of that proceeding and connection of the complainants with the said proceeding. Despite that their services were terminated. Ww2 has stated that when the proceeding relating to the charter of demand was pending as ID No. 05/2018 the mgt had called them for a

discussion and gave a proposal of salary cut. The cabin crew members agreed for the same and demanded that as a measure of assurance, their contract be extended beyond that period of two years from the date of agreement. The mgt did not accept the same and on the contrary, terminated their service. The witness examined on behalf of the mgt has stated that despite the pandemic and decline in business, the mgt was maintaining a large contingent of India based flight attendants. The mgt took various cost effective measures for it's survival. All these steps were taken after an effective discussion with the representatives of the Lufthansa Cabin Crew Association, which was the recognized union. Several agreements to that effect were executed in the year 2020. But the mgt could not resume flight operation for several reasons causing huge loss in business and thus the cabin crew association was approached for their further cooperation including a major such as continuance of employment without salary for a period of two years. Though an agreement to that effect was signed, the same was not acted upon due to some internal disagreement in the union. However, few crew members proceeded on unpaid leave for two years. Since, the flights were grounded for a long time, the mgt was left with no option than terminating the service of crew members who were appointed on a fixed term contract. The termination was never for any kind of misconduct but in accordance to the contract of their appointment, as one month salary in lieu of notice along with other contractual dues were paid. Thereby the witness stated that the mgt had never contravened the provisions of section 33 of the ID Act entailing the action under section 33A of the Act.

Findings

All the issues being interlinked and inter-dependent have been taken up for consideration together

At the outset of the argument the Ld. A/R for the mgt no. 1 pointed out that the complaint has been filed alleging contravention of section 33 of the Id Act during the pendency of Id No. 05/2018. But the complaint is not maintainable as the same has been signed and

verified by only two persons i.e. Mr. Nayan Pahwa and Mr. Mayank Malik and the remaining complainants have not signed or verified the complaint petition. Furthermore, Nayan Pahwa did not enter the witness box as he settled his dispute with the Respondent no. 1 during the pendency of this proceeding. The other complainants, whose names find place in annexure A to the complaint petition, did not choose to testify as witnesses. He also argued that the complaint under section 33A of the ID Act is akin to a dispute raised under section 2A of the ID Act. Since the procedure of CPC is followed in these types of proceedings the complaint petitions ought to have been signed and verified by all the complainants. To support his stand he placed reliance in the case of **Shankar Chakravarti Vs. Britannia Biscuit Co. Ltd. & Anr, 1979(3) SCC 371.** While pointing out to the record of this proceeding, he submitted that no authority letter was executed in favour of Mayank Malik and Nayan Pahwa on the date of filing of the complaint on 25.02.2021. As a damage repairing measure, the authority letter executed in favour of Mayank Malik and Nayan Pahwa on 28.11.2021, was filed followed by another authority letter in form F dated 03.12.2021. All these documents are liable to be rejected and the complaint by two persons on behalf of 23 others cannot be entertained. The submission of the Ld. A/R has made it expedient to examine if the complaint need to be filed/signed by the individual complainants.

In the case of Shankar Chakravarti the Hon'ble Supreme Court have observed that Rule 60 of the Industrial Disputes (Central) Rules 1957 prescribes the procedure as to how the application under section 33 is to be made. According to this rule the application has to be filed in form J or K as the case may be, and need to be a verified application. But the said observation of the Hon'ble Supreme Court is not with regard to the application filed under section 33A by the workmen which is different in nature from the application filed under section 33. No doubt as per rule 60 an employer intending to obtain express permission in writing of the Conciliation Officer, Labour Court or Tribunal under sub-section (1) or sub-section (3) of section

33 shall present an application in form J or K in triplicate. But no such rule has been prescribed for the workmen filing application under section 33A of the Act alleging violation of Section 33 of the Act. In this proceeding, the claimants have filed authority letter executed by the individual workmen in favour of the applicants Mayank Malik and Nayan Pahwa and each of them have handed over the relevant documents like their appointment letter to the same authorized persons. In the complaint petition, the authorized persons have clearly mentioned that the claim is filed on behalf of themselves and 23 other cabin crew listed in annexure A. In addition to that the claimants have filed the authorization in favour of their representatives and the advocates in form F prescribed under the Rule. Hence, in absence of any clear rule or procedure for filing the application under section 33A individually by the aggrieved persons, this Tribunal finds no reason of rejecting the authority letter in form F and the joint complaint application filed by the authorized persons.

Strenuous argument was advanced by the Ld. A/R for the mgt no. 1 stating that the Id no. 05/2018 is admittedly pending before this Tribunal and it is in respect of the general demands of the Cabin Crew Association. But in that proceeding issues have been framed and one of the issues is about maintainability of the said proceeding. The maintainability has been challenged for want of valid espousal. Unless and until that proceeding is decided and held to be an Industrial Dispute, the applicants of this proceeding cannot take the advantage of section 33A of the ID Act alleging contravention of section 33 of the Act. He also argued that the complaint has been filed alleging termination of employment during pendency of ID no. 05/2018 and in view of the same the employer is required to seek permission or approval before terminating the service. But unless and until that there is a positive finding by the Tribunal the pending dispute is an Industrial Dispute, no cognizance can be taken on the present complaint filed under section 33A of the ID Act. He also pointed out that in the complaint petition filed, the complainants have not alleged that the termination of fixed term employment contract was punitive

in nature. Unless it is so pointed out the provisions of section 33A for violation of section 33(2(b) cannot be raised. To support his submission he placed reliance in the case of **Syndicate Bank Ltd. Vs. K. Ramnath V. Bhat 1968(1) SCR 327** decided by the Hon'ble Supreme Court and in the case of **Gowrishanker Oil Mills Vs. Industrial Tribunal & Others, 1961 SCC Online KAR 197.** Basing on these judgments, he argued that as observed by the Hon'ble Apex Court in syndicate bank case this Tribunal can take cognizance of the complaint only when there is a positive finding that the pending dispute is an industrial dispute and not otherwise. He also pointed out that before a compliant under section 33A against the employer is entertained, the workman must show that the employer has contravened the provisions of section 33 of the ID Act during the pendency of this proceeding. In this case, the termination of service not being punitive in nature, but for the administrative reason of the mgt and the applicants being in fixed term employment and the terms of employment was complied properly provision of section 33A is not invocable.

The Ld. A/R for the claimant in his reply submitted that the facts of syndicate bank case (supra) is distinguishable from the facts of the present case. He pointed out to the pleadings of the mgt and submitted that the mgt has admitted that the ID No. 05/2018 is in respect of the general demands relating to the service condition of the cabin crew raised by their Association. Hence, there is no controversy that the complainants of this proceeding are directly connected with the proceeding pending as ID 05/2018.

On a careful perusal of the judgment of syndicate bank it is noticed that in that, case the contention of the Appellant mgt was that no industrial dispute was pending when the order of dismissal was passed. Hence, the question of contravention of section 33 of the Act never arose entitling the claimants to file the complaint under section 33A of the Act. After examining the documents and evidence, the Hon'ble Supreme court in the case of syndicate bank concluded that

the Id no. 04/1964was pending from 08.01.1964 to 08.10.1964 and the order of the Managing Director dismissing the Respondent from service was made on 12.11.1963, which date, admittedly, falls outside the duration of the pendency of ID No. 04/1964.

The judgment of Syndicate Bank being distinguishable on facts, in this case, it is concluded that ID No. 05/2018 is a proceeding in which the complainants are connected with since the same is a proceeding relating to the general demand of the cabin crew of management no. 1.

Now, it is necessary to examine if the termination of service of the claimants is in contravention of section 33(2(b) of the ID Act. The Ld. A/R for the mgt argued that contravention of section 33(2(b) occurs when a person is discharged or dismissed for any misconduct not connected with the dispute pending and without complying the mandatory provisions laid there under. In this case, admittedly, the complainants fixed term contracts were terminated for operational reason of the Air Line. The said termination was never a punitive action for any misconduct of the complainants. Hence, the applicants are not permitted to invoke the provisions of section 33A of the ID Act. He also pointed out that in the claim petition the applicants have not whispered a word alleging the punitive action taken against them. While filing the rejoinder, though they have explained that for refusal to accept the proposal of the mgt to go on leave for two years without pay the mgt out of vindication, terminated their services. But this statement, in the rejoinder cannot take the place of pleading and there being no pleading about dismissal as a mode of punishment the same should not be accepted to invoke the provisions of section 33 A of the Act. He also stated that the termination simplicitor of fixed term employment contract which is an exception to the definition of retrenchment as defined in section 2(oo) (bb) of the ID Act, does not amount to contravention of section 33A. He placed reliance in the case of **Birla VXL Limited Vs. State of Punjab & Others, 1998**

LLR 1167 (para7) and Blue Star Employees Union Vs. Ex-OFF Private Secretary Government, 2008 SCC page 94.

The Ld. A/R for the complainants counter argued that the Hon'ble High Court of Delhi, in the recent judgment delivered by the Division Bench in the case of **Management of National Highways Authority of India Vs. Vinita reported in 2021 ICLR page 61** have inter-alia held that:

i. For a case to be brought under Section 2(oo)(bb), employer has to plead and prove that the work for which Workmen was engaged was not of a permanent nature but need arose due to some contingency and for a short period and that ended after a period or shortly thereafter.
ii. However, Section 2(oo)(bb) cannot be read in isolation. Under definition of Workmen under Section 2(s) word permanent is not used. Thus, any one hired to do work is qualified to be a Workmen.
iii. Factual findings of CGIT not challenged by parties that Respondent continued to work for Appellant even after expiry of contract till her termination.
iv. Hence compliance under Section 25F and 25G was required as Respondent is not covered under Section 2(oo)(bb).

He, thereby, argued that when the complainants had worked for a long period varying from 14 to 15 years and had completed 240 days of work in the preceding calendar year, the stand of the mgt that provisions of section 25F and 25G were not complied nor any seniority list was displayed before termination for their fixed term contract is not tenable. In the said judgment of National Highway Authority, the Hon'ble High Court of Delhi have clearly held that for compliance of the provisions of section 25F and 25G there is no distinction between a permanent employee and the temporary employee and termination of service without complying with the provisions section 25F of the ID Act is illegal.

In this case the witness examined on behalf of the mgt admitted in clear terms that the provisions of section 25F, 25G were not complied. In the case of **M. Venu Gopal vs. L.I.C of India (1994)1LLJ 597** the Hon'ble Supreme Court have held that the definition of retrenchment being very wide and comprehensive in nature, shall cover, within it's ambit, termination of service in any manner and for any reason otherwise than as a punishment inflicted by way of disciplinary action. On a careful reading of the decisions referred supra, it is concluded that the termination of the service of the complainants amounts to retrenchment defined under section 2(oo) of the ID Act and doesn't fall under the exception of section 2 (oo)(bb) of the said Act. It is the admitted position that the provisions of section 25F and 25G were not complied by the mgt before such termination.

The Ld. A/R for the mgt further argued that the provisions of section 33 (2(b) can be held as contravened only when the alleged termination is being done as a mode of punishment. The complainants of this proceeding were not punished for any misconduct and the action of termination was never punitive. His other limb of argument is that this fact was never pleaded in the complaint petition and the rejoinder is not a pleading. To fortify his argument he placed reliance in the case of **Amarjeet Singh vs. Smt. Bhagwati Devi, FAO 134/1979** decided by the Hon'ble High Court of Delhi wherein it has been held that under order VI Rule 1 of CPC pleading means plaint or written statement and the replication is not a pleading for claiming relief and the decision of a case cannot be based on grounds outside the pleadings of the parties. He thereby submitted that whatever has been raised for the first time by the complainant in the rejoinder cannot be entertained and cannot form basis of the award. But this argument of the Ld. A/R for the mgt does not sound convincing since in the case of **M.L Gupta vs. Kripal Singh (98(2002) DLT 683) the Hon'ble High Court of Delhi** have held that replication cannot be filed by the plaintiff except by way of defence to set off as a matter of right. But with the leave of the court can be presented. Once the court required a party to file the replication, the said replication will become

part of the pleading. Hence in this case when filing of rejoinder was allowed without any objection from the mgt the same is accepted as the pleading of the complainants wherein they have pleaded about the punishment inflicted on them by the mgt by terminating their service, since they refused the offer of the mgt to proceed on a two year unpaid leave and the said termination amounts to retrenchment.

The Ld. A/R for the claimants advanced the argument that the Industrial Dispute Act does not define the word punish or punishment. In Black's law dictionary the word 'punish' has been given a meaning " a sanction-such as a fine, penalty, confinement or loss of property, right or privilege assessed against a person who has violated the law. The mgt witness Ms. Namita Chaudhry has admitted during cross examination that the complainants were offered to remain under the employment of the mgt but to proceed with unpaid leave for a period of two years in view of the slow down of the business. The witness during cross examination also admitted that the complainants did not accept the proposal and on account of disobedience their service was terminated. This clearly shows that the termination of service was a punitive action taken against the complainant. The misconduct referred to in section 33(1)(b) or section 33 (2()b)need not necessarily be a misconduct flowing out of an act of the workmen. If the action is followed by any direction not accepted by the employee, the same amounts to punishment.

The provisions of section of 33(2(b) unambiguously mandatory in nature. It has been clearly provided under section 33(2(a) and 33(2(b) that during the pendency of an Industrial Dispute, the employer can alter the service condition of the employee in regard to any matter not connected with the dispute or for any misconduct not connected with the dispute discharge or punish provided that no such workman shall be discharged or dismissed unless he has been paid wage 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. In the case of

Mahendra Singh Dhantwal Vs. Hindustan Motor Ltd., (1976) 4 SCC 606 the Hon'ble Supreme Court have held that section 33(2(b) makes it obligatory upon the employer to make an application to the Tribunal under the proviso only when he discharges or dismisses a workman for misconduct. The misconduct contemplated under section 33(2(b) of the Act need not be the one enumerated in the standing order of the company. Even though, a given conduct may not come within the specific terms of misconduct described in the standing order, it may still be a misconduct in the special facts of the case. Hence in this case the refusal by the complainants to accept the conditions offered by the mgt which was definitely damaging to their interest was taken as a misconduct by the employer and consequently their services were terminated.

The provisions of section 33(2(b) provides that for discharging or punishing a workman whether by dismissal or otherwise during the pendency of the industrial dispute, the mgt is required to act simultaneously by paying wage for one month and making an application seeking approval of the Tribunal of the action taken. In this case admittedly no application for approval has been filed by the mgt. On behalf of the workman argument was advanced that all the claimants were working for the mgt for a long period ranging from 14 to 15 years and the mgt witness had admitted that the provisions of section 25F and 25G were not complied as they were under the fixed term employment . He argued that provision of section 25f and 25G are mandatorily to be complied before termination of the employment and there is no distinction between a permanent employee and temporary employee in this regard. Thus, from the evidence on record it is again proved that the provisions of section 25 and G not complied and the order of termination was passed in contravention of the provisions of section 33(2(b) of the ID Act.

In the case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018 (decided on 10/05/2018,**

Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the suffer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

A Similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018.**

The constitution Bench of the Hon'lb espurem court in the case of **Jaipur Zila Sahakari Bhoomi VIkas Bank Ltd. Vs. Shri Ram Gopal Sharm and Ors.,2002 CLR, 789** have held that a termination of service of employee- effect- non grant of approval under section 33(2(b) is that the order of dismissal becomes ineffective from the date it was passed and therefore the employee becomes entitled to wage from the date of dismissal to the date disapproval of the application and no specific order for reinstatement would be necessary. In such a situation it will be deemed that the order or 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."

In this case the mgt is guilty of contravening the provisions of section 33(2(b) of the ID Act and for not comply8ing the provisions of section 25F and 25G of the ID Act which makes the order dated 02.02.2021termnaing the services of the claimants as per the list enclosed illegal.

Having regard to the legal positing as discussed above it is held that the applicants herein (as per the list enclosed) are entitled to reinstatement into service in the same position as they were on the date of termination with full back wages in as much as the termination of the applicants is per-se illegal and the mgt has not led any evidence to show that they have been gainfully employed during the intervening period after their termination. All the issues are accordingly answered in favour of the workmen. Hence ordered.

Order

The Complaint filed by the claimants (List enclosed) is allowed. It is held that the Mgt no. 1 during the pendency of Id No. 05/2018, acted illegally in terminating the services of the claimants without seeking approval of this Tribunal and without complying the provisions of Section 25F & 25G of the ID Act. The action of the mgt no. 1 is in complete violation of the provisions of Section 33(2)(b) of the ID Act. The claimants are held entitled to reinstatement with full back wages and continuity of service from the date of termination of service. The Mgt no. 1 is further directed to reinstate the complaints forthwith and pay them their last drawn salary and the arrears within 2 months from the date of publication of the award without interest, failing which the amount accrued shall carry interest @ 6% per annum from the date of the challenged dismissal and till the amount are finally paid. The list of the claimants is attached herewith as annexure –A:-

ANNEXURE-: "A"

SR. No.	Name of the claimants
1	Mayank Malik
2	Jatin Mishra
3	Pallavi Shandilya
4	Bhavatharani Shivkumar
5	Joanne Fonseca
6	Preeti Kadam
7	Leena Singh
8	Debashis Rasaily
9	Sameera Kalsi
10	Radhika Puri
11	Swati Singh
12	Nilesh D'sa
13	Neha Luthra
14	Gautam Dhawan
15	Snehal Gaikwad
16	Roopam Bhatti
17	Simantini Jhina

The application filed u/s 33A is accordingly answered.

Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

Presiding Officer
CGIT-Cum-Labour Court.
3rd July, 2023

Presiding Officer
CGIT-cum-Labour Court.
3rd July, 2023.