

ID no 21/2021

23<sup>rd</sup> March 2023

Present ; Sh. Mohan Bir Singh, SH. Vedant Singh, SH. Vashist Singh,  
Kumar Dubey, Ld. A/Rs for the claimant along with claimants.  
Sh. Anil Bhatt, Sh. Akhil Anand and Sh. K.K Pandey, Ld. A/Rs for  
the mgt with the witness Ms. Namita chowdhry.

This order deals with an application filed by R1 stating therein that the claimant have filed this complaint invoking the provisions of section 33A alleging contravention of section 33 of the ID Act, since their services were terminated during the pendency of ID No. 05/2018 pending before this Tribunal. The respondent no. 1 has stated that for the alleged termination of service of the claimants, a separate reference has also been received from the appropriate Government and the said reference has been registered as ID No. 138/2021, now pending before the CGIT I New Delhi. Moreover, ID No.05/2018 is also pending before this Tribunal wherein the complainants of this proceeding have raised various general demands. In this proceeding, they have alleged that during the pendency of ID no. 05/2018 between the parties, the respondent no. 1 terminated their services which amounts to contravention of Section 33 of the ID Act. But In ID no. 05/2018 mgt had taken a specific stand with regard to the maintainability of the said proceeding and a ground has also been taken that the claimants are not workmen and the dispute raised by them as ID No. 05/2018 is not an industrial dispute.

While filing reply to this complaint filed u/s 33A the mgt has also taken the said plea that ID no. 05/2018 not being an industrial dispute, it cannot be said that there was contravention of section 33 of the ID Act during the pendency of in Industrial Dispute entailing filing of a complaint u/s 33A of the ID Act. Hence, the Ld. A/R for the mgt submitted that the present proceeding filed u/s 33A is liable to the rejected or in alternate be kept in abeyance till disposal of Id 05/2018 wherein the issue relating to the maintainability of the industrial dispute will be answered. To support his contention the Ld. A/R for the mgt has relied upon the judgment of the

Hon'ble Supreme Court in the case of **Syndicate Bank Ltd. Vs. K. Ramanath V. Bhat (1968) SCR 327 AIR 1968 SC 231** and also in case of **M/s Govrishanker Oil Mills Vs. Industrial Tribunal and others 1961 SCC Online Kar 179 B** to argue that the tribunal before adjudicating upon the complaints made by the employees, has to record a positive finding that there was a proceeding pending before it in respect of industrial dispute. If for any reason, the dispute is not an industrial dispute, it would be impossible for the Tribunal to adjudicate upon the complaint before it. Hence, it is to be decided at the first instance that the dispute referred to is an industrial dispute and only after that that complaint u/s 33A can be decided.

In his counter argument the Id. A/R for the mgt citing the judgment of the Hon'ble supreme court in the case of **D.P Maheshwari vs. Delhi Administrative and others (1983) 4 Supreme Court Cases 23/93** submitted that no order has been passed in ID no. 05/2018 for hearing the maintainability as a preliminary issue. Moreover, in this proceeding issue has been framed with regard to the maintainability of the application u/s 33A of the ID Act. Not only that, the mgt was actively participating in this proceeding when the claimants adduced their evidence and the mgt cross examined them. The mgt has also prepared the affidavit of the mgt witness which has been supplied to the A/R for the claimant. On the last date i.e.03.03.2023 an application was filed for adjournment as the witness Ms. Namita chowdhry was inconveniently placed on account of illness of the family member. At that point also, no such application was filed. Today when the matter is specifically posted for examination of the mgt witness the present applicant has been filed which is designed to delay the matter. He also argued that the plain reading of the provision of law laid u/s 33A of the ID Act says that during the pendency of a proceeding before the Labour Court or Tribunal in respect of an industrial dispute, no employer shall change the service condition of the employees connected with the said industrial dispute without the express permission of the authority before whom the proceeding is pending. Hence, an objective finding whether the pending proceeding is in Industrial Dispute or not sine qua non for a proceeding u/s 33A of the ID Act as in this case. He also argued that the Hon'ble Supreme Court in the case of D.P. Maheshwari referred supra have

held that for expeditious adjudication of the Industrial Dispute all the issues need to be decided at a time.

The term Industrial Dispute as has been defined u/s 2(K) of the Industrial Dispute Act connotes a real and substantial difference between the parties having some elements of persistency and continuity till the same is resolved and likely, if not adjudicated, to endanger the industrial peace. An industrial dispute arises only when a demand is made by the workmen and denied by the employer. Section 33 of the ID Act envisages that during the pendency of the industrial dispute the employer shall not change the service condition of the employee connected with the said Industrial Dispute, same with the express permission in writing of the authority before which the proceeding is pending. In this case Id no 05/2018 is with regard to the general demand advanced by the workmen, which they have advanced as an industrial dispute. The judgment of **Syndicate Bank vs K. Ramanath** referred supra, it has been decided by the Hon'ble Supreme Court to say that in an enquiry u/s 33A, the first question that the Tribunal will have to consider is regarding the contravention by the employer of the provisions of section 33 of the Act. If this issue is answered against the employee, nothing further can be done u/s 33A of the Act. The Hon'ble supreme Court in the said judgment have also discussed the earlier judgment rendered in the case of **Equitable Coal, Ltd. Vs. Algu Singh and Punjab National Bank Ltd. Vs. Workmen** but from the one in hand the facts of the above said cases are distinguishable on facts since in that case one ID no. 04/1964 was filed and the same was pending since January 1964 to October 1964. But the order of the managing director dismissing the respondent from service was passed in November 12 1963 which date, admittedly, falls outside the duration of the pendency of ID no. 04/1964. Moreover, in the said judgment the Hon'ble Supreme Court no absolute proposition of law has been laid down to the effect that the proceeding initiated u/s 33A of the ID Act shall be kept in abeyance or cannot be decided until the other Industrial dispute is decided and a decision is arrived whether the same is an industrial dispute or the claimants of that proceeding is a workman. The only requirement of initiation of a proceeding u/s33A, is that the employer contra vents the provisions of section 33 during the pendency of a proceeding before the

4

industrial tribunal, labor court or conciliation officer. The legislator, by their wisdom have not stated that for invoking the provisions of section 33A the condition precedent are there is a finding that the dispute pending prior to the initiation of the proceeding u/s33A is an industrial dispute. The intention of the legislator is clear from the use of the words “during pendency of proceeding”

For the reasons indicated above the petition filed by the respondent no. 1 is held without merit and rejected. This is a matter pending since 2021 and has suffered several adjournments for examination of the mgt witness for some reason or other. Considering the same the mgt is directed to file the affidavit and produce the witness on 28.03.2023 for examination of the witness on behalf of the mgt. Since advance copy of the affidavit has already been supplied to the claimant the Ld. A/R for the claimant is also instructed to come ready to cross examine the witness. It is made clear that neither party will be allowed to take adjournment for the purpose and the part to be conducted by them.

Presiding Officer