



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment Reserved on: 17.11.2025*

*Judgment pronounced on: 28.11.2025*

+ W.P.(C) 13418/2018, CM APPL. 52259/2018, CM APPL.  
5838- 39/2020

THE MANAGEMENT OF SH. MOOLCHAND KHAIRATI RAM  
HOSPITAL AND AYURVEDIC RESEARCH INSTITUTE

.....Petitioner

Through: Mr. Gaurav Bahl and Ms. Anshu,  
Advocates.

versus

MS. THRESIAMMA GEORGE

.....Respondent

Through: Mr. N.D. Pancholi and Mr. Deepak  
Mayur, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA**

**JUDGMENT**

**CHANDRASEKHARAN SUDHA, J.**

1. The present writ petition under Articles 226 and 227 of the Constitution of India has been preferred by the petitioner/hospital, assailing the Award dated 10.04.2018 passed by the learned Presiding Officer, Labour Court–V, Dwarka Courts, Delhi in ID No. 5233/2016, whereby the respondent/ nurse, was held entitled



to full back wages, continuity of service and all consequential benefits from the date of her termination till the date of her superannuation.

2. The brief facts of the case are as follows-. The respondent/nurse was appointed as a staff nurse with the petitioner/hospital w.e.f. 15.04.1987. It is the respondent/nurse's case that during the course of her employment, she was a member of the workers' union and had actively supported the demand for implementation of the recommendations of the 5<sup>th</sup> Central Pay Commission in respect of the employees of the petitioner/hospital. It is alleged that the petitioner/hospital attempted to pressurize her to resign from the union and to withdraw her support from the pending industrial dispute (ID No. 86/1998), but on her refusal to succumb to such pressure tactics, she was dismissed from service *vide* order dated 14.09.1998, without issuance of any chargesheet and without holding any domestic enquiry.



2.1 At the relevant time, an industrial dispute (ID No. 86/1998) relating to the pay scales and service conditions of employees of the petitioner/hospital was pending adjudication before the Industrial Tribunal. During pendency of the said proceedings, the petitioner/hospital moved an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (the ID Act), seeking approval of the dismissal of the respondent/nurse. The said application came to be decided by the Industrial Tribunal *vide* order dated 22.12.2004 in OP No. 55/1999, whereby the approval sought by the petitioner/hospital was accorded upon consideration of whether the procedural requirements of Section 33(2)(b) of the ID Act were satisfied.

2.2 Pursuant to the grant of approval under Section 33(2)(b) of the ID Act, the respondent/nurse on 26.11.2005 raised an industrial dispute (ID No. 5233/2016) challenging her dismissal by filing a direct claim petition before the Labour Court under Section



10 of the ID Act. The petitioner/hospital contested the proceedings and, *inter-alia*, raised a preliminary objection that the order dated 22.12.2004 passed in OP No. 55/1999 operated as *res judicata* and that the claim petition was barred. The petitioner/hospital further contended that the hospital, being a charitable institution, was not an ‘industry’ within the meaning of Section 2(j) of the ID Act, and that the respondent/nurse, being a staff nurse allegedly discharging supervisory duties, did not fall within the definition of ‘workman’ under Section 2(s) of the ID Act.

2.3 In view of the plea of *res judicata*, the Labour Court framed the following issue— “*Whether the order dated 22.12.2004 in OP No. 55/99 operates as res judicata?*”—and directed that the same be treated as a preliminary issue. Upon hearing both sides, the Labour Court *vide* a detailed order dated 01.06.2015 rejected the petitioner’s/hospital’s objection, holding that the approval under Section 33(2)(b) does not constitute adjudication on merits



and cannot bar the subsequent industrial dispute challenging the dismissal.

2.4 Thereafter, evidence was led by both sides. The respondent/nurse examined herself as WW-1 and Exhibits WW-1 to WW5 were marked on her side. On behalf of the petitioner/hospital MW-1 was examined and Exhibits MW-1 to MW-19 were marked.

2.5 Upon evaluating the pleadings, evidence and after hearing both sides, the Labour Court held that the petitioner/hospital failed to establish that the hospital was not an 'industry' or that the respondent/nurse discharged supervisory functions; that no domestic enquiry was conducted against her despite enquiries having been held against similarly placed co-workers, rendering the plea of impracticability unsustainable; and that proceedings under Section 33(2)(b) of the ID Act could neither substitute a domestic enquiry nor prove misconduct—



consequently declaring the dismissal illegal and violative of natural justice, and, the respondent/nurse having already superannuated, directing full back wages, continuity of service and all consequential benefits from the date of termination till superannuation.

3. Aggrieved by the said Award dated 10.04.2018, the petitioner/hospital has approached this Court invoking its writ jurisdiction.

4. The learned counsel for the petitioner/hospital assails the impugned Award primarily on the ground that the Labour Court failed to appreciate the legal effect of the approval granted by the Industrial Tribunal in OP No.55/1999 under Section 33(2)(b) of the ID Act. The learned counsel would further submit that the Industrial Tribunal, after recording detailed evidence, returned clear findings of misconduct against the respondent/nurse and held that the dismissal was justified. Reliance is placed on the dictum



of **DTC v. Surender Pal, 142 (2007) DLT 595 (Del)** wherein it was held that if the employer establishes misconduct in the course of Section 33(2)(b) proceedings under the ID Act, such findings bind the workman in subsequent adjudication. It is urged that the Labour Court erred in re-opening issues conclusively decided in the approval proceedings.

4.1 The learned counsel for the petitioner/hospital would further place reliance on the dictum in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma, (2002) SCC 244**, to contend that once an approval is granted, the dismissal relates back to the original date, and the workman cannot re-agitate the correctness of the charges. The Labour Court wrongly diluted the scope of *res judicata* and failed to appreciate that the Industrial Tribunal had undertaken a “full-fledged enquiry”, rendering its findings conclusive.



4.2 The learned counsel for the petitioner/hospital would then emphasise that the Labour Court failed to consider the dictum in **DTC v. Delhi Administration, 2007 (96) DRJ 48 (Del)**, which reiterates that disciplinary decisions of the management, once approved, ought not to be interfered with unless perversity is shown. It is contended that the respondent/nurse did not plead or establish any perversity.

4.3 It is next contended that, in the peculiar and volatile circumstances prevailing in the petitioner/hospital at the time—when the respondent/nurse and others staged a violent demonstration and gherao, holding a domestic enquiry was impracticable. It was submitted that the Industrial Tribunal had accepted this justification in the Section 33(2)(b) order, and therefore the Labour Court erred in relying on the dictum in **Jai Bhagwan v. Ambala Central Bank, (1983) 4 SCC 611**, wherein the Apex Court held that dismissal without enquiry violates natural



justice. According to the petitioner/hospital the ratio in **Jai Bhagwan** (*Supra*) does not apply where an enquiry is impossible due to violence or breakdown of discipline.

4.4 The petitioner/hospital further asserts that the hospital is run by a charitable trust and thus does not fall within the definition of “industry” under Section 2(j). It was submitted that charitable bodies rendering medical services are not commercial establishments and therefore outside the purview of the ID Act. The Labour Court is stated to have misapplied the seven-judge judgment in **Bangalore Water Supply v. A. Rajappa, 1), Lab IC 467 (SC)**, wherein it was held that even charitable organisations could constitute an “industry”. The petitioner/hospital contends that **Rajappa** (*Supra*) must be read contextually and not automatically applied to all trusts.

4.5 It was also urged that the respondent/nurse was functioning as a supervisory in-charge over nurses and Class-IV



staff, and therefore excluded from the definition of “workman” under Section 2(s) of the ID Act. Reliance is placed on the general principle that persons exercising supervisory control and performing administrative duties are not workmen. The petitioner/hospital argues that the Labour Court misapplied the ratio in **Sudhir Kumar v. M/s Ferro Alloys, 1992 Lab IC 657 (Bom)**, wherein it was held that a person is not in a supervisory capacity unless empowered to sanction leave or take disciplinary action.

4.6 Finally, the petitioner/hospital would also contend that the award of full back wages is contrary to precedents. Reliance is placed on the dictum in **Rajasthan State Road Transport Corporation v. Phool Chand, Civil Appeal No.1736/2010 (SC)**, which holds that back wages are not automatic even where reinstatement is ordered. It is argued that the Labour Court ignored the principle that the workman must prove non-employment, and



that the Award imposes an unjustified financial burden on a charitable institution.

5. *Per contra*, the learned counsel for the respondent/nurse/workwoman submitted that the central plank of the petitioner's/hospital's argument—namely that the Section 33(2)(b) approval operates as *res judicata*—is wholly misconceived. It is submitted that the Labour Court's order dated 01.06.2015 (Annexure R-1) has made it clear that the approval proceedings do not bar a subsequent industrial dispute. This finding attained finality as the petitioner/hospital did not challenge it. Counsel relies on the authoritative decisions cited by the Labour Court, especially **Martin Burn Ltd. v. R.B. Banerjee, AIR 1958 SC 78**, and **Lalla Ram v. DCM Chemical Works Ltd., AIR 1978 SC 1004**, which hold that Section 33(2)(b) the ID Act is confined to examining procedural compliance—payment of one month's wages and bona fides—and does not adjudicate guilt.



5.1 The learned counsel would further emphasise that the Labour Court relied on an extensive line of Apex Court judgments, including **Atherton West & Co. v. Suti Mill Mazdoor Union, 1953 II LLJ 321 (SC)**, **Automobile Products of India Ltd. v. Rukmaji Bala, 1955 I LLJ 346 (SC)**, **Lakshmi Devi Sugar Mills v. Ram Sarup, 1957 I LLJ 17 (SC)**, and **G. McKenzie & Co. v. Its Workmen, 1959 I LLJ 285 (SC)**, all of which hold that the findings in Section 33(2)(b) approval proceedings do not constitute a decision on merits and therefore cannot operate as *res judicata*.

5.2 The learned counsel for the respondent/nurse also relies upon **Surender Pal v. Management of DTC, 152 (2008) DLT 671 (DB) (Del)**, where the Division Bench expressly overruled **DTC (supra)**. The Division Bench held that an approval under Section 33(2)(b) the ID Act “is not an adjudication of misconduct” and therefore “*cannot foreclose a full-fledged industrial dispute under Section 10.*”



5.3 As to the absence of a domestic enquiry, the learned counsel for the respondent/nurse invokes **Jai Bhagwan v. Ambala Central Bank, (1983) 4 SCC 611**, where the Apex Court held that dismissal without chargesheet or enquiry is per se violative of natural justice, unless impossibility to hold an enquiry is proved—which the petitioner/hospital failed to do as MW-1 admitted during cross-examination that enquiries were conducted against two co-workers for the same incident, demolishing the plea of “impracticality.”

5.4 On the “industry” issue, the leaned counsel would submit that the Labour Court rightly applied the seven-judge ruling in **Rajappa (supra)**, which held that even charitable institutions constitute industries if they organise systematic activity employing workmen. No contrary evidence was led by the petitioner/hospital. On the ‘workman’ issue, the leaned counsel would rely on **Sudhir Kumar v. M/s Ferro Alloys, 1992 Lab IC 657 (Bom)**, wherein it



was held that a person is not in a supervisory position unless vested with real managerial powers such as sanctioning leave or imposing discipline. The petitioner/hospital produced no such evidence.

5.5 Regarding back wages, the respondent/nurse argued that she deposed to her unemployment, and the petitioner/hospital led no rebuttal evidence. Reliance is placed on the dictum in **DTC v. Ram Kumar, 1982 II LLJ 191 (Del DB)**, which holds that once termination is found illegal, the normal rule is full back wages unless the employer proves gainful employment. Counsel further relies on **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324**, which holds that full back wages are the natural consequence of illegal dismissal as loss of livelihood causes serious hardship.

6. Heard both sides.



7. The foundational facts that bear upon the issue requiring determination stand undisputed. The respondent/nurse was dismissed without issuance of a chargesheet or the holding of any domestic enquiry. The petitioner's/hospital's own witness, MW-1, admitted that in respect of the very same incident, two co-employees—were issued charge sheets and enquiries were duly conducted, establishing that a domestic enquiry was not only possible but undertaken in parallel circumstances. It is equally not in dispute that the Labour Court, by its order dated 01.06.2015, framed and decided the preliminary issue as to whether the approval order dated 22.12.2004 in OP No.55/1999 operated as *res judicata*, and held that such approval did not bar the industrial dispute.

8. Turning to the petitioner's/hospital's reliance on the dictum in **Surender Pal** (*supra*), the argument is that the findings in Section 33(2)(b) proceedings bind the Labour Court in a reference under Section 10 of the ID Act. However, this contention



completely overlooks that the said decision has been expressly overruled by a Division Bench in **Surender Pal** (*supra*). The Division Bench, after an exhaustive review of the Apex Court precedents, held that approval under Section 33(2)(b) is a limited inquiry confined to procedural compliance and “*is not an adjudication of misconduct*” and therefore “*cannot foreclose the Industrial Tribunal from examining the correctness of the dismissal*”. The petitioner’s/hospital’s reliance on a judgment that has lost all precedential value is therefore wholly misconceived.

9. The petitioner/hospital next invoked **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.**(*supra*) to contend that once approval is granted, the dismissal “relates back” to the original date and cannot be reopened. However, a careful reading of **JaipurZila SahakariBhoomi Vikas Bank Ltd.**(*supra*) reveals that the ratio deals with the *consequence* of approval or refusal, not the *scope* of adjudication in a Section 33(2)(b) proceeding. The



Apex Court addressed whether an employer could treat a workman as dismissed without approval; it did not hold that such approval constitutes an adjudication on misconduct. Thus, the petitioner's/hospital's reliance is misplaced. The case does not support the proposition that approval under Section 33(2)(b) bars a subsequent reference under Section 10.

10. The petitioner's/hospital's reliance on **Delhi Administration** (*supra*) is similarly unavailing. That judgment deals with the limited scope of writ interference once disciplinary findings are recorded after a domestic enquiry. Here, however, no domestic enquiry was held, and the petitioner/hospital did not adduce any evidence to prove misconduct before the Labour Court. The petitioner/hospital cannot rely on a principle applicable to properly conducted departmental proceedings when it admittedly conducted none against the respondent/nurse. The ratio in **Delhi**



**Administration DTC v. Delhi** (*supra*) therefore has no application to the present facts.

11. Equally untenable is the petitioner's/hospital's reliance on the plea of "impracticability" of conducting an enquiry, for which **Jai Bhagwan** (*supra*) was sought to be distinguished. In **Jai Bhagwan** (*supra*), the Apex Court held that dispensing with an enquiry is impermissible unless impossibility is demonstrated, and dismissal without chargesheet violates natural justice. The petitioner's/hospital's attempt to distinguish **Jai Bhagwan** (*supra*) fails in the light of MW-1's categorical admission that enquiries were in fact conducted against two other employees involved in the same incident. This admission destroys the foundation of the plea of impracticability and brings the present case squarely within the operative ratio of **Jai Bhagwan** (*supra*).

12. The petitioner/hospital sought to argue that the hospital was not an "industry" and the respondent/nurse not a "workman",



relying on charitable status and supervisory elements. These contentions were properly rejected by the Labour Court. The seven-judge Bench decision in Bangalore **Rajappa** (*supra*), binding on all subsequent benches, squarely holds that even charitable institutions constitute an “industry” if they engage in systematic activity employing workmen. The petitioner/hospital has shown nothing to take this case outside the wide and authoritative sweep of **Rajappa**(*supra*). On the “workman” issue, the reliance on general principles of supervisory roles cannot override the ratio in **Sudhir Kumar** (*supra*), which requires evidence of genuine managerial powers such as the ability to sanction leave or impose discipline—none of which the petitioner/hospital proved. These issues, however, ultimately fade into the background, because the only point that materially impacts the outcome is *res judicata*.



13. The learned counsel for the respondent/nurse's reliance on the Apex Court decisions in **Martin Burn Ltd.** (*supra*); **Atherton West & Co.** (*supra*); **Automobile Products of India Ltd.**(*supra*); **Lakshmi Devi Sugar Mills**(*supra*); **G. McKenzie & Co.**(*supra*); and **Lalla Ram** (*supra*), lays down the controlling position. These authorities, spanning more than five decades, consistently hold that Section 33(2)(b) approval proceedings examine only procedural aspects—payment of one month's wages, absence of mala fides, and absence of victimisation—and do not entail adjudication of misconduct. The Labour Court's reasoning follows this line of decisions.

14. The respondent/nurse has also correctly placed reliance on **Management of DTC** (*supra*), which overruled the very judgment forming the linchpin of the petitioner's/hospital's argument. The Division Bench, after examining the precedents on the point, held that a reference under Section 10 of the ID Act is



not barred even where approval under Section 33(2)(b) of the ID Act has been granted.

15. The attempt to rely on back-wages jurisprudence—such as **Rajasthan State Road Transport Corporation** (*supra*) and **Ram Kumar** (*supra*) does not survive beyond the threshold issue. Once *res judicata* is found inapplicable and dismissal itself is held to be illegal, the Labour Court’s consequential relief is governed by the principles in **Deepali Gundu Surwase** (*supra*), which recognises that back wages ordinarily follow illegal termination unless the employer disproves unemployment—something the petitioner/hospital entirely failed to do. Yet, these aspects are academic for present purposes because the writ turns solely on whether the plea of *res judicata* is legally tenable.

16. Even independently of the plea of *res judicata*, the challenge raised by the petitioner/hospital cannot be sustained on merits. It stands admitted through MW-1 that no domestic enquiry



whatsoever was conducted against the respondent/nurse, while enquiries were in fact held against other employees implicated in the very same incident—thereby demonstrating that an enquiry was fully feasible and that the plea of impracticability has no factual foundation. The petitioner's/hospital's attempt to rely on the material placed in the proceedings under Section 33(2)(b) of the ID Act cannot cure this fundamental defect, for it is well-settled that evidence in such proceedings, being confined to procedural compliance, cannot substitute a regular departmental enquiry. Once the petitioner/hospital failed to lead any evidence before the Labour Court to establish misconduct, and in view of the admitted procedural lapses, the Award cannot be said to suffer from perversity, jurisdictional error or misapplication of law. Even on an independent merits review, no ground for interference under Articles 226 or 227 is disclosed.



17. In the light of the foregoing discussion, both on the legal position governing Section 33(2)(b) approvals and the factual matrix that stands admitted on record, the petitioner's/hospital's principal contention that the approval order dated 22.12.2004 operates as *res judicata* cannot be sustained. When the matter is viewed cumulatively—namely, the admitted absence of a domestic enquiry, the petitioner's/hospital's own admission that enquiries were conducted against similarly placed co-employees, the settled principle that Section 33(2)(b) proceedings cannot substitute an enquiry on merits, the Labour Court's factual findings based on evidence, and the absence of any perversity or jurisdictional infirmity—the writ petition discloses no ground warranting interference under Articles 226 or 227 of the Constitution. The impugned Award is consistent with binding precedent, supported by evidence, and based on correct legal application. Interference by this Court is therefore unwarranted.



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18. For the reasons recorded hereinabove, the writ petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

**CHANDRASEKHARAN SUDHA  
(JUDGE)**

**NOVEMBER 28, 2025**