



2025:DHC:6834-DB



\$~45

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

Date of decision: 13.08.2025

+ **W.P.(C) 2394/2020 & CM APPL. 8380/2020**

SH. HARINDER PRATAP SINGHPetitioner
Through: Mr.Vinay Sabharwal and
Mr.Karunesh Shah, Advs.

versus

DELHI TRANSPORT CORPORATION AND ANR.
.....Respondents
Through: Ms.Bhakti Pasrija and
Mr.Moksh Pasrija, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner challenging the Order dated 18.11.2019 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal') in T.A. No.24/2013, titled *Harinder Pratap Singh v. Delhi Transport Corporation & Anr.*, dismissing the said application filed by the petitioner herein.

2. To give a brief background of the facts in which the present petition arises, the petitioner was working as a Driver and was posted at Nangloi Depot with the respondents.

3. The respondents alleged that in March 1988, there was an



illegal strike in which the petitioner had participated and, therefore, by an Order dated 26.03.1988, invoking the provisions of the Essential Services Maintenance Act, 1981 (hereinafter referred to as the, 'ESM Act'), the services of the petitioner were terminated.

4. The petitioner challenged the same before this Court by way of W.P. No.763/1998. This Court directed that the same be considered by the Industrial Tribunal and accordingly, the petitioner filed I.D. No.1752/1989 before the Industrial Tribunal. The same was later withdrawn by the petitioner and he again approached this Court by way of W.P. No.2248/1994.

5. As, during the pendency of the said Writ Petition, the respondents were brought within the ambit of jurisdiction of the learned Tribunal, the Writ Petition was transferred to the learned Tribunal and was re-numbered as T.A. No.24/2013.

6. The same was thereafter decided on 27.09.2019, and the petitioner then approached this Court by way of W.P. (C) No. 2936/2019, challenging the said Order on the ground that the plea of the petitioner regarding violation of Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the, 'ID Act') was not considered. It is with respect to this specific plea that the matter was once again remanded back to the learned Tribunal and the Impugned Order dated 18.11.2019 was passed.

7. The learned Tribunal, in the Impugned Order, has dismissed the application of the petitioner by holding therein that the respondents were not obliged to follow the procedure prescribed under Section 33(2) of the ID Act, as the termination of the services of the petitioner



had taken place by resorting to the provisions of the ESM Act, which would have an overriding effect over the ID Act.

8. The learned counsel for the petitioner submits that the above finding of the learned Tribunal is erroneous inasmuch as Section 4 of the ESM Act, which empowers the employer to terminate the services of an employee who has taken part in an illegal strike, further provides that such termination shall be in accordance with the same provisions as are applicable for the purposes of taking disciplinary action against such employee. He submits that this would necessarily include within its ambit, the requirement to file an application and take approval under Proviso to Section 33 (2) of the ID Act. He submits that the 'notwithstanding clause' that is contained in Section 12 of the ESM Act, will not preclude the application of Section 33 of the ID Act inasmuch as there is nothing inconsistent between Section 4 of the ESM Act and Section 33 of the ID Act.

9. He submits that as the impugned action has been taken by the respondents in violation of Section 33 of the ID Act, the order terminating the services of the petitioner is *void ab initio* and all consequences thereof, including reinstatement and full backwages, should follow. In support, he places reliance on the Judgments of the Supreme Court in *T. N. State Transport Corporation v. Neethivilangan Kumbakonam*, (2001) 9 SCC 99, and in *Jaipur Zila Sahakarl Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and Ors.*, (2002) 2 SCC 244.

10. On the other hand, the learned counsel for the respondents submits that Section 12 of the ESM Act gives overriding jurisdiction



and primacy to the provisions of the ESM Act and hence, the procedure as prescribed in Section 33 of the ID Act need not be followed when disciplinary action is taken against the workman under Section 4 of the ESM Act. In support, she places reliance on the Judgments of the Supreme Court in *Union of India and Anr. v. G. M. Kokil and Ors.*, AIR 1984 SC 1022, and *Maktool Singh v. State Of Punjab*, 1999 (3) SCC 321.

11. The learned counsel for the respondents submits that in the present case, the Delhi Administration, by an Order dated 18.03.1988, had banned the employees of the respondents from going on strike, by invoking the provisions of the ESM Act. She submits that despite this, the petitioner had participated in an illegal strike and therefore, had been dismissed from service in accordance with the provisions of the same.

12. We have considered the submissions made by the learned counsels for the parties.

13. It is not disputed before us by the respondents that the respondents have not filed any application seeking approval of the Industrial Tribunal before terminating the services of the petitioner by taking resort to Section 4 of the ESM Act.

14. The issue before this Court is whether there was no requirement for the respondents to file such an application under the Proviso to Section 33 (2) of the ID Act, while terminating the services of the petitioner under Section 4 of the ESM Act.

15. We shall first, therefore, reproduce the relevant provisions of the ESM Act as under:



“4. Dismissal of employees participating in illegal strikes. —Any person, —

(a) who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in, any such strike; or

(b) who instigates or incites other persons to commence, or go or remain on, or otherwise take part in, any such strike, shall be liable to disciplinary action (including dismissal) in accordance with the same provisions as are applicable for the purpose of taking such disciplinary action (including dismissal) on any other ground under the terms and conditions of service applicable to him in relation to his employment.

xxx

12. Act to override other laws.—The provisions of this Act and of any order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force.”

16. We now reproduce the relevant provision of the ID Act:

“33. Conditions of Service, etc., to remain unchanged under certain circumstances during the pendency of proceedings.

xxx

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman-

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by



refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. In other words, there requires to be a determination as to which provision answers the description and which does not. While interpreting the non obstante clause, the court is required to find out the extent to which the legislature intended to do so and the context in which the non obstante clause is used. ...”

22. In the present case, Section 33 of the ID Act is not inconsistent with the power vested in the employer under Section 4 of the ESM Act, and therefore, the application of Section 33 of the ID Act to a disciplinary action taken under Section 4 of the ESM Act is not excluded by virtue of Section 12 of the ESM Act.

23. As far as the reliance of the learned counsel for the respondents on the Judgment in **G. M. Kokil** (supra) is concerned, the Supreme Court was considering the effect of Section 70 of the Bombay Shops and Establishments Act, 1948, which provided that notwithstanding anything contained in the Factories Act, 1948, the provisions of the said Act will apply to all persons employed in or in connection with a factory. The Court held that the said provision has the effect of enlarging the scope of the Factories Act by making it applicable to all persons employed in such factory irrespective of whether employed as workers or otherwise. It was held that the purpose of Section 70 of the Bombay Shops and Establishments Act was that all the relevant provisions of the Factories Act are made applicable, notwithstanding anything to the contrary contained in it, and must have the effect of



excluding the operation of the exemption provisions contained in the Factories Act.

24. In ***Maktool Singh*** (supra), the Supreme Court was considering the effect of Sections 32A and 36B of the Narcotic Drugs and Psychotropic Substances, Act, 1985. In view of the specific bar contained in Section 32 A of the said Act on grant of suspension, remission or computation in any sentence awarded under the said Act, except under Section 27 of the same, the Court held that the general provision contained in Section 36 B of the said Act cannot be invoked to re-vest such power in the Court.

25. The above Judgments would have no application to the facts of the present case.

26. In the present case, as noted hereinabove, we find nothing inconsistent in Section 4 of the ESM Act *vis-a-vis* Section 33 of the ID Act. The provisions of Section 33 (2) of the ID Act will continue to apply, notwithstanding the power being exercised by the employer under Section 4 of the ESM Act. We, therefore, find that the order terminating the services of the petitioner without complying with the provisions of Section 33(2) of the ID Act, was illegal and *void ab initio*.

27. In ***T. N. State Transport Corporation*** (supra), the effect of non-compliance with Section 33 (2) of the ID Act has been explained by the Supreme Court 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 the 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 merits 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 employee 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 Tribunal's 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 merits. 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 inquiry initiated against him.”

28. As we have held that the termination of the services of the

