(8) The impugned order was next sought to be assailed on the ground that the order (Annexure R-1) whereby his request to withdraw his prayer for voluntary retirement was declined was not a speaking order as no reasons were mentioned therein for declining it. A challenge was also made on the ground that this order had been passed without any opportunity being granted to the petitioner of being heard. There is no substance in either of these contentions. No challenge has been made in this petition to the validity of clause (v) of the instruction contained in Annexure P-1. The action taken in the present case was clearly in accordance with the terms thereof. The consequences that have accrued to the petitioner are of his own chosing. Having sought to avail of the benefit of there instructions, he thereby rendered himself liable to be bound by the terms thereof. No question of the grant of any hearing arises in such a situation, it deserves note that no *mala fides* or extraneous considerations are imputed or said to have played any role in the passing of the impugned order. There is also no warrant to infer any infirmity in the impugned order merely on the ground that no reasons have been set out therein for declining the request of the petitioner. The setting out reasons in such an order was clearly not occasioned by the circumstances here.

(9) In the result it must be held that no invalidity or illegality attaches as to the impugned order declining permission to the petitioner to withdraw his request for voluntary retirement. This writ petition is consequently hereby dismissed. In the circumstances, however, there will be no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

Before D. S. Tewatia, J.

FARIDABAD COMPLEX ADMINISTRATION, FARIDABAD,—*Petitioner.*

versus

MOR LAL and another,—*Respondents.*

Civil Writ Petition No. 5247 *of* 1975.

December 10, 1982.

Industrial Disputes Act (XIV of 1947)*—Section* 33(2)(*b*)*—Services of a workman terminated—Industrial dispute raised and pending adjudication—Employer re-employing the workman and discharging him the second time for misconduct—Such workman—Whether entitled to the protection of section* 33(2)(*b*)*—Section* 33(2)(*b*)*—When attracted.*

Held, that a plain reading of section 33(2)(b) of the Industrial Disputes Act, 1947 would reveal that the facts that suffice to attract its application are :

(i) that there should have been an industrial dispute between concerned workman and the employer;

(ii) that during the pendency of the said dispute the action envisaged in clause (b) of sub-section (2) must have been taken by the employer against the workman and the misconduct that actuated the said action against the workman must be unconnected with the subject matter of the pending industrial dispute between the workman and the employer. The basic two objects that the Legislature had in view while enacting the provisions of this section are to protect the victimisation of the worker on account of raising or continuing such pending disputes and that such pending proceedings are brought to an expeditious termination in a peaceful atmosphere undisturbed by any subsequent cause tending to further exacerbate the relation between the employer and the workman and these in no manner run inconsistent with a situation where the worker during the pending dispute secures re-employment with the said employer. In such a situation too, the anxiety of the Legislature could not have been any the less to guard against any possible victimisation of the said workman on account of his either continuing of the pending industrial dispute between the said workman and the employer or anything done by the worker in prosecution of the said dispute. The expression 'worker' and the 'employer' used in sub-sections (1) and (2) of section 33 of the Act means the employer and workman between whom an industrial dispute was pending when the action by the very employer against the very workman as envisaged by section 33 is taken. The provisions of this section do not require the worker to fulfil further qualification in order to qualify for the protection envisaged in section 33 of the Act. The expression 'workman' relates to a named workman and do not refer to a workman doing a given job or holding a given post. Hence, to attract the provisions of section 33(2)(b), it is enough if two facts exist; (i) that when the action envisaged by the said provision is taken by the employer an industrial dispute between that workman and the employer is pending; and (ii) that the alleged misconduct was not connected with the subject matter of the said pending suit. (Paras 4, 7 and 8).

Petition under Articles 226 and 227 of the Constitution of India praying that the following reliefs may kindly be granted to the petitioner:—

(i) The records of the case may kindly be called from Respondent No. 1 for the perusal of this Hon'ble Court, and an

appropriate writ in the nature of certiorari or any other appropriate writ, order or direction be passed quashing the award which is annexed as annexure P-1.

(*ii*) *The petitioner may be exempted from filing the original documents of the case and only certified copies be allowed to be filed.*

(*iii*) *Pending the final disposal of the petition, the operation of the said Award may kindly be stayed.*

(*iv*) *The costs of the petition may also kindly be awarded to the petitioner.*

(*v*) *Any such other relief in the circumstances of this case which this Hon'ble Court may deem fit may also be granted to the petitioner.*

Kuldip Singh, Bar-at-Law, Advocate, with M. M. Kumar, Advocate, *for the Petitioner.*

R. S. Mittal, Advocate, *for the Respondents.*

JUDGMENT

D. S. Tewatia, J.

This petition covers somewhat of a virgin legal field, in that, the question that falls for consideration herein is *res integra.* The proposition can be stated thus:—

(2) Whether the provisions of Section 33, sub-section (2) clause (b) of the Industrial Disputes Act (hereinafter referred to as the Act) covers a workman whose services are once dispensed with by the employer and regarding which an industrial dispute is pending adjudication and the workman is re-employed by the very employer either on the same job or on a better job and then he is discharged from that second job for a misconduct unconnected with the industrial dispute in question.

(3) Respondent No. 1 was employed as Mate originally by the Municipal Committee, Faridabad, which now stands merged in Faridabad Complex Administration, Faridabad, petitioner. His services were terminated on 13th February, 1965 regarding which an industrial dispute came to be raised on 12th August, 1968. When the dispute was still pending, by a resolution the respondent workman was employed as Sanitary Jamadar by the said Municipal Committee on 31st December, 1970. It is thereafter that

the Municipal Committee ceased to exist and in its place Faridabad Complex Administration stood impleaded as respondent to the said industrial dispute. On 17th January, 1973 respondent number one's services were dispensed with after due inquiry by the petitioner for a misconduct. Thereafter, respondent-workman moved application under section 33-A of the Act before the Labour Court which was seized of the earlier dispute alleging that his services had been terminated without compliance with the provisions of Section 33(2)(b) of the Act. The Labour Court held that the provisions of Section 33(2)(b) of the Act were applicable to the facts of the case and that the order terminating the services of the workman by Faridabad Complex Administration was illegal, in that the said employer did not simultaneously move an application for approval of the action taken before the Labour Court in question. It is this award which has been challenged by Faridabad Complex Administration in this petition on the ground that the provisions of Section 33(2)(b) of the Act are not attracted to the facts of the present case.

(4) Before proceeding with the consideration of the legal question posed above, relevant provisions of Section 33 of the Act require to be noticed:—

"33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings (1) During the pendency of any conciliation proceedings before a conciliation officer or a Board of any proceeding before (an arbitrator) or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall:—

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute;

Save with the express permission in writing of the authority before which the proceeding is pending.

(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 dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages 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."

The plain reading of the aforesaid provision of Section 33(2)(b) would reveal that the facts that suffice to attract its application are:—(i) that there should have been an industrial dispute between concerned workman and the employer; that during the pendency of the said dispute the action envisaged in clause (b) of sub-section (2) must have been taken by the employer against the workman and the misconduct that actuated the said action against the workman must be unconnected with the subject matter of the pending industrial dispute between the workman and the employer.

(5) It has been canvassed on behalf of the petitioner that provisions of Section 33(22)(b) only cover the case of a workman who continued to remain the employee of the same employer that is the pending industrial dispute between him and the employer did not relate to an action of termination of his services by the employer. In other words during the pendency of the industrial dispute, relationship of employer and employee continued to exist. But where such a relationship stood snapped as a result of termination of services by the employer and which action gave

rise to the pending industrial dispute, the said provisions of Section 33 would not be attracted.

(6) Mr Kuldip Singh, learned counsel for the petitioner drew attention to the following observations of their Lordships in *Air Corporation, Bombay* v. *Revello and another* (1), where an analysis of the objects and reasons underlying the said provision has been attempted:—

> "The basic object of these two sections broadly speaking appears to be to protect the workmen concerned in the disputes which form the subject matter or pending conciliation proceedings or proceedings by way of reference under S. 10 of the Act against victimisation by the employer on account of raising or continuing such pending disputes and to ensure that those pending proceedings are brought to expeditious termination in a peaceful atmosphere, undisturbed by any subsequent cause tending to further exacerbate the already strained relations between the employer and the workmen. To achieve this objective a ban, subject to certain conditions, has been imposed by S. 33 on the ordinary right of the employer to alter the terms of his employees' service to their prejudice or to terminate their services under the general law governing contract of employment and S. 33A provides for relief against contravention of S. 33 by way of adjudication of the complaints by aggrieved workmen considering them to be disputes referred or pending in accordance with the provisions of the Act. This ban, however, is designed to restrict interference with the general rights and liabilities of the parties under the ordinary law within the limits truly necessary for accomplishing the above object. The employer is accordingly left free to deal with the employees when the action concerned is not punitive or *mala fide* or does not amount to victimisation or unfair labour practice. The anxiety of the legislature to effectively achieve the object of duly protecting the workman against victimisation or unfair labour practices consistently with the preservation of the employer's *bona fide* right to maintain

(1) A.I.R. 1972 S.C. 1343.

discipline and efficiency in the industry for securing the maximum production in a peaceful harmonious atmosphere is obvious from the overall scheme of these sections."

The aforesaid observations of their Lordships recaptulating underlying objects and reasons for enacting Section 33 in its present form, in my opinion, do not in any manner sustain the contention which Mr. Kuldip Singh has advanced.

(7) The basic two objects that the Legislature had in view while enacting the provisions of Section 33 of the Act, i.e. to protect the victimisation of the worker on account of raising or continuing such pending disputes and that such pending proceedings are brought to an expeditious termination in a peaceful atmosphere undisturbed by any subsequent cause tending to further exacerbate the relation between the employer and the workman, in no manner run inconsistent with a situation where the worker during the pending dispute secures re-employment with the said employer, say, for instance, by virtue of provisions of Section 25-H of the Act during the pendency of dispute resulting from an action on the part of the employer retrenching the services of the said workmen. In such a situation too, the anxiety of the Legislature could not have been anytheless to guard against any possible victimization of the said workman on account of his either continuing of the pending industrial dispute between the said worker and the employer or anything done by the worker in prosecution of the said dispute.

(8) The expression 'worker' and the 'employer' used in sub-sections (1) and (2) of Section 33 of the Act means the employer and workman between whom an industrial dispute was pending when the action by the very employer against the very workman as envisaged by the provisions of said action i.e. Section 33 is taken. The provisions of said Section do not require the worker to fulfil further qualification in order to qualify for the protection envisaged in Section 33 of the Act. The expression 'workman' relates to a named workman and do not refer to a workman doing a given job or holding a given post. Hence, to attract the provisions of Section 33(2)(b), it is enough if two facts exist: (i) that when the action envisaged by the said provision is taken by the employer an industrial dispute between that workman and the employer was pending; and (ii) that the alleged misconduct was not connected with the subject matter of the said pending suit.

For the reasons aforementioned, I hold that the Labour Court has taken correct view of the provisions of Section 33 of the Act.

In the result, I find no merit in this petition and dismiss the same with costs. Counsel's fee Rs. 200.

N.K.S.

Before S. S. Sodhi, J.

ORIENTAL FIRE & GENERAL INSURANCE COMPANY LTD.,—*Appellant.*

versus

THAKUR DASS and others,—*Respondents.*

First Appeal from Order No. 91 *of* 1980.

December 14, 1982.

Motor Vehicles Act (IV of 1939)—*Section* 103-*A*—*Ownership of a Motor vehicle transferred to the purchaser—Policy of insurance still in the name of the original owner when the accident took place—Request for transfer of certificate of insurance in favour of the purchaser had, however, been made before the date of the accident and no reply received within* 15 *days—Insurer—Whether liable under Section* 103-*A.*

Held, that the whole object of section 103-A of the Motor Vehicles Act, 1939 is to provide an opportunity to the insurance company with whom the vehicle is insured, to state if there is any objection to accept the purchaser of the vehicle as the insured person as a result of the transfer of the motor vehicle. The rigour of the section that in case there is no intimation of the insurer's refusal to transfer the certificate and the policy in favour of the purchaser of the vehicle then the said certificate and the insurance policy shall be deemed to have been transferred to the purchaser is indeed a salutory provision which appears to have been introduced with a view to prevent the insurer from seeking to avoid liability unless they have affirmatively declined to agree to the novation of the contract of indemnity. The provisions contained in section 103-A of the Act are by their very nature beneficial and thus call for a liberal construction so as to advance the underlying object for their enactment. So construed, there is no escape from the conclusion that the provisions thereof are applicable to the transfer