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Mahajan, J.

to apply to the medical practitioners. It may also be mentioned in passing that the State counsel made it plain that if any serious grievance of the medical practitioners still remains it will be open to them to move the Labour Commissioner who will sympathetically consider their representation and try to meet their just grievances. It is further directed that the letter containing the Government undertaking be placed on the record.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before D. Falshaw and Tek Chand, JJ.

THE BRITISH INDIA CORPORATION LIMITED,—
Petitioner

versus

THE INDUSTRIAL TRIBUNAL, PUNJAB, AND ANOTHER,—
Respondents.

Civil Writ No. 426 of 1960.

1961

Oct 12th

Industrial Disputes Act (XIV of 1947)—Section 33(2)—Application under, for approval of the action of the management—When to be made.

Held, that the application under section 33(2) of the Industrial Disputes Act, 1947, to the Labour Court or Tribunal for approval of the action taken by the management against the workman concerned is an *ex post facto* requirement and what the employer has to apply to the Labour Court or Tribunal for is not approval of an action proposed to be taken but one which has actually been taken. It will be sufficient compliance of the proviso if an order of dismissal is passed by the employer and the dismissed workman paid one month's wages and application is filed for the approval of the Labour Court or Tribunal within a reasonably short time.

Case referred by the Hon'ble Mr. Justice A. N. Grover on 25th November, 1960, to a Division Bench, for decision

owing to question of law involved in the case. The case was finally decided by the Division Bench consisting of Hon'ble Mr. Justice Falshaw and Hon'ble Mr. Justice Tek Chand on 12th October, 1961.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari *or any other writ or directions be issued quashing the order of the respondent No. 1, dated 9th January, 1960.*

BHAGIRATH DASS, ADVOCATE, for the Petitioner.

ANAND SAWROUP AND R. S. MITTAL, ADVOCATES, for the Respondents.

ORDER

Falshaw, J.

FALSHAW, J.—This is a petition under Article 226 of the Constitution which has been referred to a Division Bench because of certain difficulties arising out of the interpretation of section 33 of the Industrial Disputes Act, 1947. The section as a whole deals with the maintenance of the *status quo* during the pendency of conciliation proceedings or cases proceeding before Labour Courts and Tribunals and sub-section (1) deals with the *status quo* as regards the matters connected with the pending dispute itself. Sub-section (2) reads:—

> "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—
>
> (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 proceedings; 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 facts of the case are as follows. In June, 1958 an industrial dispute between the workers of the New Egerton Woollen Mills, Dhariwal, a branch of the British India Corporation Ltd., and the employees was pending before the Industrial Tribunal at Jullundur of which the sole member was Shri Avtar Narain Gujral. On the 18th of June, 1958 a fight took place in the office of the Engineering Department between Jiva Mal, the contesting respondent in the present petition, and a Supervisor named Waryam Singh. Both these workmen were charge-sheeted and ordered to be dismissed, after an enquiry, on the 20th of August, 1958. As they were among the workmen concerned in the dispute already pending before the Tribunal an application was filed by the Company under section 33(2) of the Act on the 23rd of August, 1958 for approval of the orders of dismissal of Waryam Singh and Jiva Mal. This application was decided by the Tribunal by its order, dated the 1st of December, 1958. The Tribunal held on the evidence produced before it that a *prima facie* case had been made out for the dismissal of both Waryam Singh and Jiva Mal, but approval was only granted in the case of Waryam Singh.

Approval was refused in the case of Jiva Mal on a technical ground, namely, that the terms of the proviso regarding the payment of one month's wages had not been complied with. It appears that Jiva Mal was occupying a residential quarter belonging to the Company and in the notice of dismissal conveyed to Jiva Mal dated the 20th of August, 1958 he was informed that he would be paid full salary up to date from the date of his suspension and one month's salary in addition as

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provided under the Industrial Disputes Act, but at the same time that these dues could be collected from the Cash Office on any working day after he had vacated the Company's quarter which he was asked to do within a week. This imported a condition on the payment not warranted by law. This decision of the Tribunal appears to be wholly correct, and it seems to have been accepted as such by the Company, whose next step was to communicate a fresh order of dismissal to Jiva Mal dated the 5th of January, 1959. This communication reads:—

> "*Vide* Industrial Tribunal's award dated 1st December, 1958 the approval of the action was not granted by the Tribunal on a technical ground. A copy of the award is enclosed for your reference.
>
> You are now informed as under:—
>
> Our letter dated 20th August, 1958 be read as under:—
>
> *Para* 5. 'You will be paid full salary upto 20th August, 1958 plus one month's salary in addition as provided under I.D. Act plus also full salary up to 1st December, 1958'.
>
> *Para* 6. 'The dues payable to you are being remitted by money order separately.'
>
> A fresh application under section 33 is being filed before the Industrial Tribunal."

The fresh application was in fact filed before the Tribunal on the 12th of January, 1959 in which the circumstances related above were set out and approval for the dismissal of Jiva Mal was applied for afresh.

By the time this application was decided, on the 9th of January, 1960, the previous presiding officer

had been succeeded by Shri Kesho Ram Passy and he dismissed the application on the grounds that the previous order dismissing the Company's application had become final as it has not been challenged in any manner and the Company, by paying Jiva Mal his wages up to the 1st of December, 1958, the date of the order of the Tribunal had in effect recognised him as being in service as a result of which fresh proceedings for his dismissal had become necessary.

As I have said at the outset the case was referred to a larger Bench by the learned Single Judge because the proviso to sub-section (2) has been differently interpreted by different High Courts. The proviso appears to be badly drafted in that the words "unless . . . an application *has been* made by the employer to the authority" appear to be inconsistent with the words "for approval of *the action taken* by the employer." The controversy centres round the question whether the application for the approval of the Labour Court or Tribunal has to be filed actually before the order of dismissal of an employee is passed, which would imply that the words "action taken" would have to be construed a meaning "the action proposed to be taken" or whether it is sufficient compliance of the proviso if an order of dismissal is passed by the employer and the dismissed workman paid one month's wages and application is filed for the approval of the Labour Court or Tribunal within a reasonably short time. The former view has been taken by a Division Bench of the Bombay High Court in *The Premier Automobiles Ltd.* v. *Ramchandra Bhimayya and another* (1), and again by a Division Bench in *Indian Extractions Private Ltd.* v. *A. V. Vyas, Conciliation Officer and another* (2). The opposite view has been taken by a Division Bench of the Rajasthan High Court in *Associated Cement Companies Ltd.* v. *Industrial Tribunal, Rajasthan, and another* (3).

This very controversy was raised before the Supreme Court in the case of *Lord Krishna Textile Mills* v. *its workmen* (4), but although the arguments in favour of the rival views have been set out

(1) A.I.R. 1960 Bom. 390.
(2) A.I.R. 1961 Gujrat 22.
(3) (1959) 2 L.L.J. 810.
(4) (1961) 1 L.L.J. 211.

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in the course of the judgment, the learned Judges refrained from deciding the point on the ground that apparently it was raised for the first time in the arguments before them and both the proceedings before the Tribunal and the pleadings in the Supreme Court had proceeded on the basis that the application under section 33(2) which was filed after the order of dismissal of the employee had been passed/had been properly made. On this ground it would appear that we also would be justified from refraining from deciding the point, since it is clear that it was not taken on behalf of the workman before the Tribunal either in the first or the second application of the employer, and before us no written statement was filed on behalf of the workman and so no such pleading was specifically taken. The petition was filed early in April, 1960 and heard on the 25th of November, 1960 and apparently the point was raised on behalf of the respondent workman in consequence of the reporting of the Bombay case in the meantime.

However, now that the point has been raised and the case referred to a larger Bench because of the conflict of decisions I feel that I ought to express some opinion on the matter. It is undoubtedly impossible to reconcile the inconsistent words as they stand in the proviso, but it seems to me that the view taken by the learned Judges of the Rajasthan High Court does less violence to the language used and is a preferable expression of the intention of the Legislature. Incidentally I may observe that I am astonished that although this conflict of decision had developed in 1959 and 1960, the matter has not even yet been set at rest by a suitable amendment of the proviso so as to make its meaning perfectly clear. If the view of the Bombay and Gujrat Courts is correct it appears to me that it would lead to rather an absurd situation in practice. That is, when an employer has found a reason for dismissing an employee unconnected with the dispute pending before the Labour Court or Tribunal and he proceeds to hold an enquiry and finds the employee guilty of conduct warranting dismissal, he must then hand the employee a month's wages, run to the Tribunal or Court and file an application for approval of the

dismissal of the employee, and then come back and pass the actual order of dismissal. I agree with the view of the learned Judges of the Rajasthan High Court that in fact the filing of the application for approval of the action taken is an *ex post facto* requirement and that what the employer has to apply to the Tribunal for is not approval of an action proposed to be taken but one which has actually been taken.

I do not, however, consider that this finding helps the employer on the facts of the present case. The original application for approval filed within a few days of dismissal of the employee was rightly dismissed by the Tribunal on the findings that the necessary requirement of the proviso regarding payment of one month's wages had not been complied with. The second application for fresh approval of the original order of dismissal was not filed until the 12th of January, 1959, some six weeks after the dismissal of the first application on the 1st of December, 1958.

The result of the withholding of the approval of the dismissal of the workman was obviously that he must be deemed to have still remained in the service of the mills, but instead of fully recognising this fact and passing a fresh order of dismissal based on the original proceedings and paying the workman his wages up to the 5th of January, 1959, the management merely made an amendment to the original order to the effect that he would be paid his salary up to the 1st of December, 1958, together with one month's wages as required by the proviso. It seems to me that even in the most liberal interpretation of the proviso the application filed on the 12th of January, 1959 could not possibly be held to comply with its provisions and in these circumstances I am of the opinion that there is no ground for interference under Article 226 of the Constitution with the order of the Tribunal dismissing the application. I would accordingly dismiss the petition, but leave the parties to bear their own costs.

TEK CHAND, J.—I agree. Tek Chand, J.

B.R.T.