

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 17th OF NOVEMBER, 2022

MISC. PETITION No. 4834 of 2021

BETWEEN:-

**ZYDUS HEALTHCARE LTD THR. ITS AUTHORIZED
REPRESENTATIVE ZYDUS TOWER, SATELLITE CROSS
ROAD (GUJARAT)**

.....PETITIONER

(BY SHRI ANURAG LAKHOTI, ADVOCATE)

AND

**SH. JYOTI KUMAR SHARMA S/O SH.
SAMESHCHANDRA SHARMA OCCUPATION: EARLIER**

- 1. WORKING AS MEDICAL REPRESENTATIVE 10, RAM NAGAR EXTN. NEAR VINDHYANCHAL SCHOOL GATE NO. 2 (MADHYA PRADESH)**
- 2. LD. LABOUR COURT DEWAS (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI PANKAJ THAKKAR, ADVOCATE)

*This petition coming on for orders this day, the court passed
the following:*

ORDER

1. This petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated **12.10.2021**, passed by the Labour Court, Dewas in Reference Case No.27/ID/2021 whereby, the Labour Court has registered the

application under Section 33A of the Industrial Disputes Act,1947 (hereinafter referred to as 'the Act') and the notices have been issued to the respondent. After receiving the notice of the aforesaid order, the petitioner has preferred this petition alleging that there was no occasion for the Labour Court to initiate proceedings under Section 33A of the Act as the prerequisite of initiation of such proceedings i.e. element of change in service condition was not present to initiate conciliation proceedings before the Conciliation Officer as provided under Section 2-A r/w Section 10 of the Act has not been fulfilled as the petitioner was suspended, charge sheeted and was dismissed after a detailed enquiry on **30.06.2021**.

2. Counsel for the petitioner, Shri Anurag Lakhoti has drawn the attention of this Court to the alleged conciliation proceedings which took place prior to initiation of the proceedings by the Labour Court. These documents include notice dated 20.10.2020, issued by the Labour Officer, Dewas in respect of the complaint received by him from the respondent no.1/complainant as the petitioner company had suspended the services of the respondent No.1, as also the order sheets of the Labour Officer wherein, in none of the places, it is mentioned that the conciliation proceedings have been initiated against the petitioner company.

3. Counsel has also drawn the attention of this Court to the application filed by the petitioner under Section 10 of the Act wherein, it is clearly mentioned that it has been presented before the Labour Officer and the Conciliation Officer (Sanradhan Adhikari).

Counsel has submitted that although the application was addressed to the Labour Officer and Sanradhan Adhikari, but while taking cognizance of the aforesaid application, the notice was issued to the petitioner only under the authority of the Labour Officer construing the application filed by the respondent as a complaint only and there was no reference to the fact that the proceedings are conciliation proceedings.

4. To draw a comparison, counsel has also invited the attention of this Court to a notice issued by the Conciliation Officer, Bhopal to one Brijesh Singh in some other conciliation proceedings, and the attention of this Court is also drawn to the contents of the aforesaid notice wherein, various sections of the Industrial Disputes Act have also been referred to. Counsel has submitted that the petitioner company was under the impression that only a complaint is being entertained by the Labour Officer, which is different from the conciliation proceedings arising out of the order of suspension of the respondent no.1. It is further submitted that the Labour Court has also erred in taking cognizance of the application filed under Section 33A of the Act and from the record it is apparent that the application before the Labour Officer was only against the suspension of the respondent and not against his termination of his service. Counsel has submitted that, had the petitioner had any knowledge about initiation of conciliation proceedings by the so called Conciliation Officer, they would have submitted their objections in-line with the provisions of the Act. However, as only a complaint was being entertained by the

Labour Officer against the order of suspension, it was treated by the petitioner as a complaint only and not the proceeding by the Conciliation Officer. In support of his contention, counsel has also relied upon the decision rendered by the Division Bench of this Court in the case of ***Management, Dainik Naveen Duniya, Wright Town, Jabalpur Vs Presiding Officer, Labour Court, Jabalpur and another*** reported as **ILR (1992) 166** in which the Division Bench has reflected upon the maintainability of the writ petition, while relying upon a decision rendered by the Supreme Court in the case of ***Bhavnagar Municipality Vs Alibhai Karimbhai*** reported as **AIR 1977 SC 1229**.

5. The petition has been opposed by the counsel for the respondents. Reply to the petition has also been filed. Counsel for the petitioner has submitted that no illegality has been committed by the Labour Court in considering the fact that it has already been 45 days after the conciliation proceedings started, and that is why the case has been registered under Section 2-A (2) of the Industrial Disputes Act. It is further submitted that the Labour Officer before whom conciliation proceedings was filed, is actually a Conciliation Officer only as he has been given the charge of the Conciliation Officer and thus, merely because the Conciliation Officer, in issuing notice to the petitioner, has mentioned his designation as Labour Officer, it would not vitiate the proceedings initiated by him.

6. Counsel has also submitted that the petitioner is a layman and is not aware of the legal glossary and he had simply submitted his

application before the Labour Officer who was also having the charge of the Conciliation Officer.

7. Heard learned counsel for the parties and perused the record.
8. From the record, it is found that the petitioner Zydus Healthcare Ltd. suspended the respondent No.1 Ms. Jyoti Kumar Sharma on 10/10/2020, and the charge sheet has been issued to him on 17/10/2020 whereas he was terminated from service vide order dated 30/06/2021. It is also found that after the respondent was suspended, he preferred an application under Section 10 of the Act before the Labour and Conciliation Officer. The contention of the petitioner is that the Labour Officer is not the Conciliation Officer as provided under Section 4 of the Act and thus, the Labour Court had no jurisdiction to invoke the provisions of Section 2-A(2) of the Act and register the complaint vide order dated 12/10/2021.
9. A perusal of the proceeding before the said Labour-Cum-Conciliation Officer reveals that nowhere in the aforesaid proceedings has it been mentioned that he/she is proceeding under Section 10 of the Act as a conciliation officer. In the notice issued to the petitioner by the said Labour Officer on 20/10/2020, it is simply mentioned that a complaint has been received regarding the respondent's suspension and the explanation was sought from the petitioner failing which, it is mentioned that appropriate legal proceedings shall be initiated against him. A reply to the aforesaid notice was also filed by the petitioner. Counsel for the petitioner has

also placed on record, a copy of the notice dated 03/08/2021 issued by the Conciliation Officer, Bhopal in some other case to demonstrate that whenever a notice is issued by the Conciliation Officer, a specific notice is issued by referring to Section 11, 12(1) and 33(A) of the Act, but no such notice was ever served to the petitioner and thus, the petitioner was not even aware that conciliation proceedings have started. At this juncture, it would be apt to refer to both these notices viz., the notice dated 20/10/2020 issued to the petitioner, and the notice dated 03/08/2021 issued by the conciliation officer at Bhopal which read as under:

10. Notice issued by the Labour Officer/Conciliation officer on 20/10/2020:-

“कार्यालय श्रम प्रदाधिकारी, जिला देवास (म.प्र.)
क्रमांक / बफा / तीन / श्रपदे / 2020 / 5980-81 देवास दिनांक 20 / 10 / 2020

प्रति,

1. चेयरमेन एवं प्रबंध निर्देशक,
जायडस हेत्थ केयर लि.
जायडस कार्पोरेट पार्क
जेड एच.एल. सेल्स एण्ड एडमिनिस्ट्रेशन डिपाटमेंट
स्कीम 63 सर्वे नं.536, खोराज (गांधी नगर)
वैष्णदेवी सर्किल के पास एस.जी. हाईवे,
अहमदाबाद-382401 गुजरात

2. महाप्रबंधक (एच.आर.)
जायडस हेत्थ केयर लि.
जायडस टावरा, सी.टी.एस. नं.460 / 6
विपेज पहाड़ी ऑफिस आई.बी. पटेल रोड, गौरेगांव (इस्ट) मुंबई 400063

विषय:- आवेदक श्री ज्योति कुमार शर्मा को बिना किसी कारण बताए सेवा से निलंबन कर उसके वेतन से कटौती किये जाने बाबद।

संदर्भ:- आवेदक श्री ज्योति कुमार पिता रमेशचंद्र शर्मा द्वारा प्रस्तुत आवेदन पत्र दिनांक 14 / 10 / 2020

उपरोक्त विषयांतर्गत संदर्भित आवेदन पत्र द्वारा आवेदक श्री ज्योति कुमार शर्मा द्वारा अवगत कराया गया कि उसे प्रबंधन संस्थान जायडस हेत्थ केयर लि. द्वारा बिना किसी कारण बताए सेवा से निलंबन करने एवं उसके वेतन से कटौती किये जाने संबंधी शिकायत की गई है।

प्राप्त शिकायत के संबंध में निर्देशित किया जाता है कि आवेदक श्री ज्योति कुमार पिता रमेशचंद्र शर्मा के सेवा नियोजन के संबंध में तत्यात्मक प्रतिवेदन 7 दिवस में मय दस्तावेजी

साक्ष्य सहित प्रेषित करें। प्रतिवेदन प्राप्त नहीं होने की दशा में शिकायत में वैधानिक कार्यवाही प्रस्तावित की जाएगी।

संलग्न:- संदर्भित पत्र की छायाप्रति।

श्रम पदाधिकारी
जिला देवास (म.प्र.)”

11. Notice dated 03/08/2021 issued by the Conciliation Officer, Bhopal:-

“चूंकि आवेदक ब्रजेश सिंह आ. श्री आर.सी. सिंह द्वारा प्रस्तुत आवेदन के कारण औद्योगिक विवाद अधिनियम के अंतर्गत विवाद उत्पन्न हो गया है और यह औद्योगिक विवाद अधिनियम की धारा 2(ए) के अंतर्गत औद्योगिक विवाद की परिभाषा में आता है।

और चूंकि इस कारण मैं पी.जासेमिन अली सितारा, संसाधन अधिकारी एवं सहायक श्रमायुक्त, भोपाल संभाग, भोपाल विवाद की औद्योगिक विवाद अधिनियम, 1947 की धारा 12(1) के अंतर्गत संराधन कार्यवाही में हस्तगत करती हूँ, विवाद को औद्योगिक पंजी क्रमांक 18/2021 में पंजीबद्ध किया गया है।

एतद द्वारा संराधन कार्यवाही की प्रथम बैठक इस कार्यालय में दिनांक 24/08/2021 को 2:00 बजे नियत की गई है। बैठक में विवाद से संबंधित आवश्यक कागजात एवं अन्य दस्तावेज एवं जो आपके आधिपत्य में हैं या आपके किसी प्रकार के नियंत्रण में हों साथ लावें। आपकी अनुउपस्थिति की स्थिति में प्रकरण में एक पक्षीय कार्यवाही की जावेगी। जिसके आप स्वयं उत्तरदायी होंगे।

आपका ध्यान औद्योगिक विवाद अधिनियम, 1947 की धारा 33 (ए) की ओर आकर्षित किया जाता है, कि संराधन कार्यवाही की प्रगति लम्बित रहने के दौरान श्रमिक/कर्मचारी की सेवाओं में कोई परिवर्तन नहीं किया जावे।

आपका ध्यान औद्योगिक विवाद अधिनियम, 1947 की धारा 11 की ओर आकर्षित कर निर्देश है कि आप या आपके द्वारा अधिकृत प्रतिनिधि की उपस्थिति तथा दस्तावेजों को प्रस्तुत कराये जाने हेतु सिविल न्यायालय का अधिकार प्रदत्त है। अतः प्रत्येक बैठक में उपस्थिति सुनिश्चित करें।

संराधन अधिकारी
एवं सहायक श्रमायुक्त,
भोपाल संभाग, भोपाल”

12. A bare perusal of the aforesaid notices clearly reveals that the notice issued to the petitioner lacked the material particulars as have been referred to in the notice issued by the Conciliation officer, Bhopal.

13. So far as the relevant provisions of the Industrial Disputes Act, 1947 are concerned, Section 2-A(2), 4, 12 and 33 read as under:-

“2A. (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

S.4 reads as under:-

4. Conciliation officers.-

(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

Xxxxx

12. Duties of conciliation officers.-

(1) Where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public

utility service and a notice under section 22 has been given, shall hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation.

14. It is apparent from the aforesaid provisions that the concerned Labour Officer, who has claimed to be the Conciliation Officer has also not complied with the same and has not proceeded in accordance with s.2, if at all he /she was the Conciliation Officer. On the other hand, the respondent workman has not placed on record any such specific order/notification u/s.4 of the Act to demonstrate that the Labour Officer was in fact given the charge of the Conciliation Officer.

15. So far as the change/alteration in the service condition of the petitioner is concerned, the Full Bench of this Court in the case of *Management, Dainik Naveen Duniya* (supra) while relying upon the decision rendered by the Supreme Court in *Bhavnagar Municipality Vs. Alibhai Karimbhai* has held as under:-

“The Supreme Court in *Bhavnagar Municipality v. Alibhai Karimbhai* (1977)-1 LLJ 407 laid down that in order to attract Section 33(1)(a) of the Industrial Disputes Act, 1947, the following features must be present:

"(1) There is a proceeding in respect of an industrial dispute pending before the Tribunal.

(2) Conditions of service of the workmen applicable immediately before the commencement of the Tribunal proceeding are altered.

(3) The alteration of the conditions of service is in regard to a matter connected with the pending industrial dispute.

(4) The workmen whose conditions of service are altered are concerned in the pending industrial dispute.

(5) The alteration of the conditions of service is to the prejudice of the workmen".

If any of these conditions is wanting in a given case or is not established, complaint under Section 33A of the Act shall not be tenable. Earlier, the Supreme Court in Automobile Products of India v. Rukmaji Bbala: 1955-1 LLJ 346 (SC) observed that it is the contravention by the employer of the provisions of Section 33 that gives right to the workmen to approach and move the respective authority named in that section and this contravention is the condition precedent to the exercise by the authority concerned of the additional jurisdiction and powers conferred on it by the section. The authority mentioned in the section is a Court of limited jurisdiction and must, accordingly, be strictly confined to the exercise of the functions and powers actually conferred on it by the Act which constituted it.

4. Examined in the light of the aforesaid decisions, it is apparent that the impugned order directing respondent No. 2's transfer has no concern whatever with the pending dispute relating to fixation of wages. By no stretch, it is possible to say that the respondent No. 2's transfer has any bearing upon fixation of wages of employees in general. The respondent No. 2 even on the post of his transfer, shall be paid the wages as determined by the Labour Court in that dispute. We are, therefore, of the opinion that the respondent No. 2's transfer from Jabalpur to Bhopal does not have the effect of altering the respondent No. 2's service condition much less to his prejudice: For the aforesaid reasons, we are of the opinion that the application filed by the respondent No. 2 under Section 33A of the Industrial Disputes Act is wholly untenable.

5. Learned counsel for the respondent workman submitted that the impugned order staying the respondent No. 2's transfer is of an interim nature and this Court seldom interferes with such orders in exercise of its jurisdiction under Article 226 of the Constitution of India. Learned counsel, however, rightly stated that he does not mean to contend that this Court does not have jurisdiction to interfere with such orders, in fact, this Court has intervened even with interim orders like the present one staying operation of impugned order. (See Durg Transport Company v. R.T.A. Raipur : AIR 1965 MP 142). In our opinion, the conditions laid down under Section 33A are preliminary or collateral conditions upon which jurisdiction of the Industrial Tribunal depends. It is only on the establishment of those conditions that the Labour Court gets jurisdiction to entertain the application. The High Court,

therefore, is always entitled in a proceeding for writ of certiorari to determine whether or not those conditions have been established and, consequently, the Labour Court has become entitled to exercise that jurisdiction. If the conditions are wanting or have not been established, there would be complete want of jurisdiction in Labour Court to entertain any application and to pass any interim order in those proceedings. As we have found earlier that the necessary conditions have not been established for the exercise of jurisdiction under Section 33A, we are further of opinion that the Labour Court could not pass the impugned order staying the respondent No. 2's transfer."

(emphasis supplied)

16. In such facts and circumstances of the case, the impugned order passed by the Labour Court cannot be sustained for the reason that the Conciliation Officer itself has erred in complying with the provisions of the Act while issuing notice to the petitioner and on the other hand, even the competence of Labour Officer as Conciliation officer is doubted, and whereas, even before the Labour officer, the petitioner filed only the order of suspension and not the order of termination.

17. In such circumstance, this Court is of the opinion that when the Labour Officer himself/herself lacked the jurisdiction of Conciliation Officer to proceed as per the provisions of the Act, the Labour court's order to register the case when the order of termination was directly filed before it, is also liable to be set aside. In view of the same, the impugned order dated **12.10.2021** is hereby set aside with a liberty to the respondent to file a fresh application u/s.10 of the Act against his termination before the Conciliation Officer, District Dewas with a direction that if the charge of Conciliation Officer is also given to the Labour officer, he/she shall proceed in accordance with law. The

parties are also directed to appear before the Labour/Conciliation Officer on 05/12/2022. It is made clear that this Court has not reflected upon the merits of the matter and the Labour/Conciliation Officer shall decide the matter, in accordance with law on its own merit including the objection of the petitioner regarding jurisdiction of the Labour officer.

18. With the aforesaid directions, misc. petition stands ***disposed of.***

(Subodh Abhyankar)

Judge

krjoshi