

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

FRIDAY, THE 30TH DAY OF SEPTEMBER 2022 / 8TH ASWINA, 1944

WP(C) NO. 26926 OF 2012

PETITIONER/S:

MIDLAND RUBBER PRODUCE COMPANY LTD.
ARNAKAL ESTATE, VANDIPERIYAR P.O., IDUKKI
DISTRICT-685 533, REP.BY ITS ASSISTANT VICE
PRESIDENT (HR & ADMN.), MR.GILBERT D' SOUZA.
BY ADVS.
SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.BENNY THOMAS
SRI.P.GOPINATH
SRI.K.JOHN MATHAI

RESPONDENT/S:

- 1 UTHAYASURIYAN
PF NO.4370, HILLASH DIVISION, ARNAKAL ESTATE,
VANDIPERIYAR P.O., IDUKKI DISTRICT-685 533.
- 2 DEPUTY LABOUR OFFICER
PEERMADE, IDUKKI DISTRICT-685 531.
- 3 PEERMADE THOTTAM THOZHILALI UNION
(CITU), REG.NO.226/57, PR CENTRE, VANDIPERIYAR,
IDUKKI DISTRICT-685 533, REPRESENTED BY ITS
SECRETARY.
BY ADV.SRI.THOMAS ABRAHAM
GOVT. PLEADER SRI. UNNIKRISHNA KAIMAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.09.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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MOHAMMED NIAS C.P.,J.

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W.P. (C) No. 26926 of 2012

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Dated, this the 30th day of September, 2022

JUDGMENT

The petitioner challenges Ext. P9 order dismissing the application filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short "the Act") seeking approval of the dismissal order passed against the first respondent herein.

2. The petitioner, a company having tea and rubber estates in Kerala, initiated disciplinary proceedings against the first respondent/workman. Following the finding in the enquiry report that found the workman guilty of the charges, a punishment of dismissal was imposed as per Ext. P4. The petitioner/employer made Ext. P5 application under Section 33(2)(b) of the Act in view of the pendency of the Industrial dispute raised by the 3rd respondent on the charter of demands made before the 2nd respondent. The said application was rejected by Ext. P9 stating that in view of the pending dispute raised

at the instance of the Union, the application filed by the employer cannot be allowed.

3. The learned Senior Counsel for the petitioner Sri. E.K. Nandakumar submits that the 2nd respondent has not exercised the jurisdiction vested in him under the Act legally. He further submits that that even if the industrial dispute is pending, approval ought to have been granted without prejudice to the right of the Union to proceed with the dispute. The finding in Ext. P9 is ex facie illegal and the duty of the 2nd respondent was only to verify whether the enquiry stated to be conducted was fair and whether one month's wages as prescribed under the proviso to Section 33 (2) (b) was paid. He further submits that as the twin requirements were satisfied, the approval sought for ought to have been allowed.

4. Learned counsel for the respondent Sri. Thomas Abraham submitted that since the 3rd respondent Union of which the first respondent was a member had raised an industrial dispute questioning the disciplinary action initiated by the Manager, Ext. P9 order cannot be faulted. It is further submitted that the management had come up with false allegations to wreck vengeance against the first respondent and the previous litigations proved the same. Two

suits filed by the management are also pending. He further argues that prior permission was required from the Conciliation Officer concerned as mandated under Section 33 (1)(b) of the Act and Ext. P5 application filed by the management was misconceived.

5. Having considered the arguments by the learned counsel on either side, I am of the firm view that Ext. P9 order cannot be sustained as the consideration mandated under Section 33 (2)(b) has not been done while rejecting the prayer for approval. As pointed out by the learned Sr. counsel, the Supreme Court in **John D'Souza v. Karnataka State Road Transport Corporation [JT 2019 (12) SC 363]**, has held that the enquiry contemplated under Section 33 (2)(b) of the Act was summary in nature to see prima facie if the domestic enquiry was fair and just and whether the employee was given a reasonable opportunity in compliance of the principles of natural justice. The object behind such a provision is to ensure that pending adjudication of a dispute, the employer should not act with vengeance leading to further industrial dispute. Same view has been taken by a Division Bench of this Court in the decision reported in **Comnico Binani Zinc Limited v. K.N. Mohanan and Anr. [ILR 1993 (3) KER 170]**.

6. Section 33 of the ID Act, as it stood prior to the 1956

amendment, virtually prohibited a change of service conditions to the prejudice of workman or discharge or dismissal of the workman during the pendency of any conciliation proceedings or any other proceedings before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute. The object was obviously to protect the workman concerned against victimization for having raised an industrial dispute and further to ensure adjudication of pending industrial proceedings in a peaceful atmosphere. After the amendment of Section 33 in the year 1956, there is a clear distinction between the action proposed to be taken by the employer regarding any matter connected with the dispute on one hand, and action proposed to be taken regarding a matter not connected with the dispute pending before the authority. While sub Section (1) of Section 33 deals with matters connected with the pending dispute and imposes a ban on change of service conditions or discharge or dismissal except with the express permission in writing of the authority before which the proceeding is pending, Sub-Section (2) of Section 33 deals with the alterations in the conditions of service as well as discharge or dismissal of workman concerned in any pending dispute where such alteration or such discharge or dismissal is in regard to a matter not connected to the pending dispute. To put it differently, it is a permission seeking an approval of the action already taken. On a reading of the provisions

and the judgments mentioned above, it is clear that the limited enquiry contemplated under Section 33 (2) (b) of the Act is only to find whether a proper domestic enquiry has been held to prove the misconduct attributed to the workman and whether he has been afforded reasonable opportunity to defend himself in consonance with the principles of natural justice. The object, therefore, of such an enquiry is to lift the veil to find out that there is no hidden motive to punish the workman or the act is an abortive attempt to punish him for a non-existing misconduct. Proviso to Section 33 (2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization or unfair practice by the employer during the pendency of an industrial dispute when the relationship between them is strained.

7. In view of my above finding that the second respondent has not properly considered the application under Section 33 (2) (b), I consider it necessary to question Ext. P9 and remit the matter to the said authority, to consider the application afresh after hearing the management and the workmen and to take a decision in accordance with law. The parties will be free to urge all contentions available to them before the 2nd respondent. The 2nd respondent will pass an order as ordered above as expeditiously as possible at any rate within an

outer limit of four months from the date of receipt of a copy of this judgment.

Writ Petition is disposed of with the above direction.

SD/-MOHAMMED NIAS C.P., JUDGE.

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/TRUE COPY/

APPENDIX

PETITIONER EXTS:

EXT.P1: TRUE COPY OF THE CHARGE SHEET DATED 28-4-2010 ISSUED TO THE
1ST RESPONDENT

EXT.P2: TRUE COPY OF ENQUIRY PROCEEDINGS WITH REPORT OF THE ENQUIRY
OFFICER DATED 15-09-2011

EXT.P3: TRUE COPY OF 2ND SHOW CAUSE NOTICE DATED 23-01-2012 ISSUED BY
THE PETITIONER TO THE 1ST RESPONDENT

EXT.P4: TRUE COPY OF DISMISSAL ORDER DATED 9-3-2012 ISSUED BY THE
PETITIONER TO THE 1ST RESPONDENT

EXT. P5: TRUE COPY OF APPLICATION DATED 9-3-2012 FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT

EXT.P6: TRUE COPY OF COMPLAINT DATED 14-3-2012 FILED BY THE 3RD
RESPONDENT UNION

EXT. P7: TRUE COPY OF NOTICE DATED 28-3-2012 ISSUED BY THE 2ND
RESPONDENT

EXT. P8: TRUE COPY OF NOTICE DATED 24-4-2012 ISSUED BY THE 2ND
RESPONDENT TO ATTEND THE HEARING ON 17-5-2012

EXT.P9: TRUE COPY OF ORDER DATED 4-09-2012 ISSUED BY THE 2ND
RESPONDENT REJECTING THE APPROVAL APPLICATION FILED BY THE PETITIONER

RESPONDENT 1 EXTS:

EXT. R1 (A) THE TRUE COPY OF THE ORDER DATED 12-4-2007 ISSUED BY THE
INSPECTOR OF PLANTATIONS TO THE PETITIONER MANAGEMENT

EXT. R1 (B): THE TRUE COPY OF THE JUDGMENT DATED 12-7-2013 IN W.P.(C) NO.
15977 OF 2007