IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10475 OF 2022

Sandoz Private Limited
having its registered office at Plot No.8A/ 2 and 8-B, TTC Industrial Area, Kalwe Block, Village Digha, Navi Mumbai – 400 708 ...Petitioner

Versus

Bhartiya Kamgar Karmachari Mahasangh, 5, Navalkar Lane, Prarthana Samaj, Girgaon, Mumbai – 400 004 ...Respondent

Mr. Sudhir Talsania, Senior Advocate, a/w A. K. Jalisatgi, i/b Stish Hegde, for the Petitioner.
Mr. Sanjay Singhvi, Senior Advocate, a/w Mr. Beenet D'Costa and Ms. Jignasha Pandya, for the Respondent.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 3rd APRIL, 2023
PRONOUNCED ON : 17th APRIL, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally at the stage of admission.

2. This petition assails the legality, propriety and correctness of an order dated 16th June, 2020 passed by the learned Member, Industrial Court at Thane on an application for interim relief (Exhibit-U2) in Complaint (ULP) No.156 of 2018 whereby

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the application came to be allowed by directing the following interim working arrangement till the disposal of the application:

> "3. The interim working arrangement pending the present hearing of complaint shall be as under -
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> The PSR's of complainant as per list Annexure-A intending to or desirous to work with respondent No.1 to intimate within one month of this order to this Court and respondent no.1 through complainant or individually by e-mail or otherwise of their intention to work with respondent no.1 company.
>
> 4. After expiry of one month of this order and with one month thereafter, the respondent No.1 to provide work to the said workers and shall pay wages and provide all benefits as per the last settlement or agreement and continuation thereof from the date of their joining work till disposal of the present complaint.
>
> 5. The company has option of instead of providing of work, to provide security for the wages of the employees from the date of retrenchment till December-2020, on or before 31st March, 2021, and shall thereafter for every calender year furnish security for the wages of such employees willing to work for every year within 31st March of the next year. The security provided shall be to the satisfaction of the Court. The above arrangement shall be in-existence till pendency of the present complaint, and subject to final decision. The security shall be valid for a period of six months from disposal of complaint.
>
> 6. It is clarified that the workers who have availed VRS or ex-gratia payment or tendered resignation will not be entitled to claim benefits of this order."

3. The background facts leading to this petition can be stated, in brief, as under:

(a) Sandoz Private Limited ("Sandoz"), the petitioner, is a company incorporated under the provisions of the Companies Act, 1956. Sandoz is a division of Novartis AG, a multinational company incorporated and based in Basel Switzerland ("Novartis AG"). Sandoz had employed around 179 employees known as

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Professional Service Representatives ("PSRs") in its commercial operations division for marketing of certain brands in India which were leased by Novartis AG to the petitioner for marketing purposes.

(b) Respondent is a Trade Union registered under The Trade Unions Act, 1926. Respondent represents PSRs in Novartis as well as Sandoz. Respondent has signed three settlements with the petitioner, the last one being on 18th March, 2016.

(c) Sandoz runs its operations in divisions namely Prolife, Aspira, INSPIRA and Arogya Parivar Division. Respondent contends the PSRs were transferable inter-division.

(d) Respondent Union approached the Industrial Court with a complaint of unfair labour practices alleging that the petitioner had decided to remove, retrench or render surplus the PSRs, somehow or other. Sandoz had been in the process of reorganization of its business with a design to surreptitiously get rid of the workmen, who were permanent workmen selling/ marketing products in its Inspira division.

(e) The complaint proceeds on the premise that in the month of September, 2016 a news report was published that Sandoz and Navortis AG were in the process of divesting some of

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the niche domestic brands in India. Upon being confronted, Sandoz replied that the media reports were speculative and Union would be duly consulted. On 16th February, 2017 the complainant protested the proposed sale of brands citing its adverse effect on the employees. Since Sandoz was completely non-communicative, the complainant vide letter dated 3rd March, 2017 raised an industrial dispute.

(f) The complainant contends, since Sandoz did not respond to the demands, the complainant addressed letter dated 9th March, 2017 to the Deputy Commissioner of Labour (Conciliation) requesting him to conciliate in the said demand. Preliminary discussions were held by the Deputy Labour Commissioner on 7th April, 2017 and 28th April, 2017. Eventually on 28th April, 2017 the conciliation officer admitted the demand dated 3rd March, 2017 in conciliation.

(g) While the conciliation proceedings were underway, according to the complainant, Sandoz vide communication dated 8th May, 2017 informed that Novartis had decided to divest its two brands i.e. Registrone and Pregachvie to Torrent Pharma and discontinue the marketing and distribution of Evalon. The complainant was informed by Sandoz on 9th May, 2017 that Novartis AG had divested the Trade Mark and brands Registrone

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and Pregachvie in favour of Torrent Pharma and therefore those brands as well as Evalon would not be available for promotion to PSRs of Sandoz.

(h) The complainant contends the said sale adversely affected the viability of the business and entailed the consequence of retrenchment of PSRs. It would adversely affect the service conditions of PSRs, especially those contained in Items 10 and 11 of Schedule IV of Industrial Disputes Act, 1947 ("the Act, 1947"). Sandoz was, therefore, obligated to give a notice of change under Section 9A of the Act, 1947. The complainant alleged, failure to give notice of change under Section 9A of the Act, 1947 amounted to illegal change of service conditions and since the said change occurred during the pendency of the conciliation proceeding, it was in teeth of the provisions contained in Section 33(1)(a) of the Act, 1947. Resultantly, the aforesaid acts constituted unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 ("the Act, 1971").

(i) This was followed by an organizational announcement on 8th June, 2017 that Sandoz had taken a decision to discontinue its commercial activities in India.

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Complainant lodged protest. Sandoz notified a Voluntary Retirement Scheme from 1st July, 2017.

4. The complainant alleges, Sandoz resorted to coercive tactics to force the PSRs to opt for voluntary retirement under the said scheme, and that also constituted an unfair labour practice under Item 10 of Schedule IV of the Act, 1971. The complainant further alleged that Mr. Lokesh Kumar Manikonda, the then country head of Sandoz, was made the country head incharge of the Arogya Parivar Division. The marketing was sought to be done by franchisee marketing (contract labour representatives) and third party operations. Such reorganization of the marketing was with a design of changing the service conditions of the permanent employees of Sandoz to that of contract worker doing the same work under Aarogy Parivar Division. This also required a notice of change under Section 9A of the Act, 1947.

5. The complainant thus lodged the complaint of unfair labour practices under Items 9 and 10 of Schedule IV of the Act, 1971 on 15th July, 2017. Copy of the complaint was served on the Sandoz and respondent Nos.2 and 3 thereto on 17th July, 2017. Notice was given that the matter would be moved for the interim relief on 21st July, 2017. The complainant alleges despite

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service of the complaint and notice on 20th July, 2017 Sandoz terminated the services of PSRs. vide e-mail. Retrenchment compensation was deposited in the respective bank accounts of the employees.

6. The complainant thus amended the complaint to assail the retrenchment on the ground that the retrenchment of workmen while conciliation proceedings were underway amounted to violation of Section 33(1)(a) of the Act, 1947 and an unfair labour practice under Item 9 of Schedule IV of the Act, 1971. According to the complainant the termination in the circumstances of the case constituted a change in the service conditions of the workmen in violation of Section 9A of the Act, 1947.

7. By way of further amendment, the complainant assailed the case of closure of Inspira division sought to be put-forth by Sandoz by contending that the closure was illegal for being in violation of the provisions contained in Section 25-FFA of the Act for want of proper notice to the appropriate Government and adequate compensation to the workmen. The purported closure and termination of the services were stated to be *mala fide* and with a design to circumvent the provisions of law and render the interim application infructuous.

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8. Sandoz resisted the application by filing reply and an additional reply post amendment in the application for interim relief. Sandoz denied all the allegations of unfair labour practices. The status of PSRs as 'workman' was also put in contest.

9. Broadly the defence of Sandoz proceeded as under:

(A) A decision was taken by Novartis AG to divest the brands owned by Novartis AG and transfer the sale and marketing of the brands to Torrent Pharma. Resultantly, most of the high revenue contributing brands in Inspira Division and the products included in such brands which were being merely marketed by Sandoz but effectively owned by Novartis AG, were *inter alia* no longer available for sale and marketing by the PSRs employed by Sandoz. Secondly, the distribution arrangement with Aspen Pharmacare Pty. Ltd. was also discontinued in respect of Evalon, another revenue contributing brand. In effect, Sandoz could no longer promote and sale products in India. Thus Sandoz had no option but to close its commercial operations division.

(B) To address the situation, according to Sandoz, it initiated measures for separation of PSRs from its employment. A handsome voluntary retirement scheme vide notice dated 1st

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July, 2017 was notified. 36 PSRs. opted for VRS under the said scheme. As the commercial operations division had closed, Sandoz had no option but to terminate the services of remaining 142 PSRs by way of retrenchment after following due process.

(C) Even after termination, Sandoz extended the benefit of VRS scheme to a number of PSRs who had not opted for VRS. Out of 143 PSRs, according to Sandoz, it had accepted the request of 112 PSRs. The complaint thus get restricted to 31 PSRs who have neither opted for VRS nor *ex gratia* payment of VRS amount.

(D) In substance, the defence of Sandoz is that the termination of the services of the PSRs was occasioned by the circumstances beyond the control of Sandoz. It was contended that in the circumstances the Sandoz had not indulged in any unfair labour practice.

10. The learned Member, Industrial Court, after appraisal of the pleadings, material on record, and an elaborate consideration was persuaded to allow the application. It was, *inter alia,* held that the PSRs affiliated to the complainant satisfy the description of workmen and were entitled to reliefs under the Act, 1971. However, the termination was not bad for not following the law relating to closure. The alleged

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transactions or business dealings between Novartis AG, Sandoz and Novartis India and Arogya Parivar had no bearing on the dispute raised in the complaint and, thus, could not be a ground of challenge. The learned Member was also of the view that since no service environment was available the provisions contained in Section 9A of the Act, 1947 were not attracted and, therefore, the claim of unfair labour practice premised on breach of Section 9A of the Act, 1947 cannot be countenanced.

11. The learned Member, Industrial Court was, however, of the view that there was clear breach of the provisions contained in the Act, 1947 as regards the compliances required to be made in respect of retrenchment. That made out a strong *prima facie* case in favour of the complainant. On the aspect of the breach of the provisions contained in Section 33(1) of the Act, 1947, the Industrial Court was of the view that conciliation proceedings were pending as of the date of the filing of the complaint. Yet, Sandoz circumvented the established legal process and went on to terminate the PSRs during the pendency of the complaint, despite having been served with a copy of the complaint and the notice of the matter being moved for interim relief on the next date. Since the act of the Sandoz was in clear breach of Section 33 of the Act 1947 as no permission was obtained from the

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concerned authority *a prima facie* case of unfair labour practice of illegal retrenchment amounting to termination of the services of PSRs was made out. Holding that the balance of convenience tilted in favour of the workmen and they would suffer irreparable loss, the learned Judge was persuaded to devise the interim working arrangement, extracted above.

12. Being aggrieved the petitioner has invoked the writ jurisdiction of this Court.

13. I have heard Mr. Talsania, the learned Senior Counsel for the petitioner and Mr. Singhvi, the learned Senior Counsel for the respondent, at some length. The learned Counsel took the Court through the pleadings and documents on record.

14. Mr. Talsania would urge that the learned Member, Industrial Court, having answered most of the points in favour of the Sandoz could not have passed impugned order on the ground that retrenchment was in breach of the provisions contained in Section 33(1)(a) of the Act, 1947. Taking the Court through the impugned order extensively Mr. Talsania would urge that when the learned Member found that the termination was not bad for not following the law relating to the closure; observed that the closure was necessitated on account of a purely business decision; recorded that the Industrial Court

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was not called upon to delve into the transactions or business dealings between Novartis AG, Sandoz and Arogya Parivar and, more importantly, found that there was no service environment and thus Section 9A of the Act, 1947 had no application, could not have drawn the inference of unfair labour practice.

15. These findings, according to Mr. Talsania, dismantle the very substratum of the complainant's case. These findings support the stand of the Sandoz that since there was no brand left with Sandoz for marketing, there was no work and thus it was a clear case of retrenchment. The petitioner had forwarded a notice to the appropriate Government under Section 25F(c) of the Act, 1947, and had paid the retrenchment compensation. Therefore, the finding that the retrenchment was in breach of the provisions contained in Chapter VA of the Act, 1947 is clearly erroneous.

16. Mr. Talsania strenuously urged that the learned Member, Industrial Court, committed a manifest error in taking a view that the retrenchment itself is a change in service condition so as to attract the provisions contained in Section 33(1)(a) of the Act, 1947. It was urged that since the employment comes to an end with retrenchment there was no question of change in

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service conditions. The impugned order, therefore, deserves to be interfered with, urged Mr. Talsania.

17. Per contra, Mr. Singhvi would submit that the submissions sought to be canvassed on behalf of the petitioner are in teeth of the express statutory provisions and well recognized governing precedents. Mr. Singhvi canvassed a two-pronged submission. Mr. Singhvi would urge that the nature of the impugned order deserves to be kept in view. The learned Member, Industrial Court, has given an option to the petitioner to either provide work to those PSRs who are willing to work or give security. This being the nature of the impugned order, according to Mr. Singhvi, no interference is warranted in exercise of extraordinary writ jurisdiction.

18. Secondly, it was urged with tenacity that Section 9A and Section 33 operate in different fields. The fact that the Court found that the provisions of Section 9A were not attracted to the facts of the case would not *ipso facto* lead to an inference of non-application of Section 33(1)(a) of the Act, 1947. Mr. Singhvi urged with a degree of vehemence that it is incontestible that the conciliation proceedings were still underway and a complaint under Items 9 and 10 of Schedule IV of the Act 1971 was filed before the Industrial Court. Yet, the petitioner brazenly

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terminated the services of PSRs. If this is not in teeth of the provisions contained in Section 33(1)(a) of the Act, 1947, probably no case would be covered by Section 33(1)(a) and the said provision would be rendered a dead letter, urged Mr. Singhvi. Taking the Court through the record of proceedings before the competent authority and conciliation officer Mr. Singhvi would urge that the instant case is clearly governed by the ratio enunciated in the cases of ***The Bhavnagar Municipality vs. Alibhai Karimbhai and others***[1] and ***Dalanvalan Imarat Bandhkam and Patbandhare Kamgar Union and Others vs. The State of Maharashtra and ors.***[2]***.***

19. I have given anxious consideration to the aforesaid submissions.

20. To begin with, it may be apposite to note that there is not much controversy on facts. The complainant had an inkling that Sandoz was in the process of reorganization. Sandoz asserts since the revenue generating brands were transferred by Novartis AG to Torrent Pharma, no work was left in Inspira Division of Sandoz. In the wake of the controversy the complainant initially initiated conciliation proceedings and later on filed the complaint on 15th July, 2017. It is not controverted

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1(1977) 2 SCC 350.
2(1991) 4 BCR 111.

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that copy of the complaint was served on the petitioner on 17th July, 2017. The claim of complainant that notice about the matter being moved for interim relief having been served on the petitioner has not been seriously contested. Indisputably, the retrenchment order was issued on 20th July, 2017.

21. In the backdrop of the aforesaid facts the pivotal question that comes to the fore is whether the petitioner altered the conditions of service applicable to the workmen immediately before the commencement of the conciliation proceedings? Section 33(1)(a) of the Act, 1947 read as under:

> **"[33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.--**
>
> **(1)** During the pendency of any conciliation proceeding before a conciliation officer or a Board or 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 proceeding; or
>
> **(b)** ..... Save with the express permission in writing of the authority before which the proceedings is pending."

22. A plain reading of the aforesaid provision would indicate that there is a clear prohibition in Section 33(1)(a) of the Act against altering the conditions of service of a workman sans written permission of the Tribunal or other Authority before whom the conciliation or other proceedings, in the wake of an

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industrial dispute, are pending. The section thus makes the power of the employer to alter the conditions of service to the prejudice of the workman involved in the industrial dispute subject to the permission in writing of the authority before which the proceeding is pending. If this *staus quo ante* is not maintained the proceedings before the specified authorities would be rendered infructuous by the employer resorting to the device of altering the conditions of service of the workmen.

23. In the facts of the case at hand, the question that comes to the fore is whether retrenchment itself amounts to a change in the condition of service. As noted above, the petitioner asserts that since the employer – employee relationship itself came to an end it would not be a case of alteration in the conditions of service as no industrial environment subsisted.

24. The question as to whether retrenchment constitutes an alteration in condition of service so as to fall within the tentacles of the provisions contained in Section 33(1)(a) of the Act was considered by the Supreme Court in the case of ***Bhavnagar Municipality*** (supra). In paragraph 2, the Supreme Court has narrated the factual background in which the aforesaid question arose in the said case. It reads as under:

> "**2**. There was an industrial dispute pending between the Bhavnagar Municipality (briefly the appellant) and its

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> workmen before the Industrial Tribunal in Reference 37 of 1974 referred to it under Section 10(1)(d) of the Act on March 5, 1974. The said industrial dispute related to several demands including the demand for permanent status of the daily rated workers of the Water Works Section of the Municipality who had completed 90 days' service. While the aforesaid industrial dispute was pending before the Tribunal, the appellant, on September, 30, 1974, passed orders retrenching 22 daily rated workmen (briefly the respondents) attached to the Water Works Section of the Municipality. It is not disputed that the appellant had complied with Section 26F of the Act and due retrenchment compensation had been paid to those workers. On June 20, 1975, the respondents filed a complaint to the Tribunal under Section 33A of the Act for contravention of Section 33 of the Act by the appellant."
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> (emphasis supplied)

25. After adverting to the provisions contained in Section 33(1)(a) of the Act, 1947 and the essential features thereof, the Supreme Court enunciated the legal position as under:

> "**13**. Retrenchment may not, ordinarily, under all circumstances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment cannot amount to alteration of the conditions of service. In this particular case, however, the subject matter: being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. They were entitled during the pendency of the proceeding before the Tribunal to continue as temporary employees hoping for a better dispensation in the pending adjudication. And if the appellant wanted to effect a change of their system in getting the work done through a contractor instead of by these temporary workers, it was incumbent upon the appellant to obtain prior permission of the Tribunal to change the conditions of their employment leading to retrenchment of their services. The alteration of the method of work culminating in termination of the services by way of retrenchment in this ease has a direct impact on the adjudication proceeding. The alteration effected in the temporary employment of the respondents which was their condition of service immediately before the commencement of the proceeding before the Tribunal, is in

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> regard to a matter connected with the pending industrial dispute."
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> (emphasis supplied)

26. The aforesaid pronouncement thus indicates that nature of the dispute pending before the Tribunal or Authority assumes critical salience. If the change in the condition of service pertains to any matter connected with an industrial dispute before the Tribunal or Authority the interdict contained in Section 33(1)(a) would come into play. In the said case, since the industrial dispute revolved around conversion of the temporary employment into permanent, the Supreme Court held that the order of retrenchment of daily rated workmen was in contravention of the provisions contained in Section 33(1)(a) of the Act, 1947.

27. A useful reference can also be made to a judgment of this Court in the case of ***Dalanvalan*** (supra) wherein, after following ***Bhavnagar Municipality*** (supra), the learned Single Judge repelled the contention that retrenchment does not fall foul of Section 33(1)(a) of the Act, 1947 and held that the justification of the retrenchment was wholly besides the point and irrelevant. The observations in paragraphs 7 and 8 are material and hence extracted below.

> "**7**. The justification of the retrenchment of the concerned workmen is wholly besides the point and irrelevant. The

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> question before the Industrial Court was not whether the workmen were justifiably retrenched, but whether their retrenchment amounted to breach of Section 33(1)(a) of the Industrial Disputes Act and consequently an unfair labour practice within the meaning of Item 9 of Schedule IV of the Act. This is the question considered by the Industrial Court on which a finding adverse to the petitioner has been recorded. This is the only adverse finding which the petitioner has impugned in the present petition. Despite the efforts of Mr. Soni to persuade me to hold that there was no change in the conditions of service of the workmen, as they continued to be temporary throughout and consequently there was no breach of section 33(1)(a), I am afraid, this question also is not *res intergra* in view of the judgment of the Supreme Court in (*The Bhavnagar Municipality v. Alibhai Karimbhai and others), 1977 LIC 834.* In the case before the Supreme Court, daily rated workmen of the Municipality had raised an industrial dispute. The subject matter of the dispute was connected with the conversion of the temporary workmen into permanent. During the pendency of this dispute, the Municipality removed the concerned workmen from service and the Supreme Court took the view that such tampering with *status quo ante* of those workers was a clear alternation of the conditions of their service and the alteration was in regard to a matter connected with the pending industrial dispute and thus there was contravention of Section 33(1)(a) of the Industrial Disputes Act. In view of the clear pronouncement of the Supreme Court on this issue, I decline to accede to the able arguments advanced by Mr. Soni touching this aspect of the matter.
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> 8. In my view, the Industrial Court erred in law and misdirected itself in coming to the conclusion that there was no breach of section 33(1)(a) of the Industrial Disputes Act. The circumstances clearly showed that there was breach of section 33(1)(a) of the Industrial Disputes Act. Once the conclusion reached that there was breach of Section 33(1)(a), it is only as short hop therefrom to the conclusion that there is an unfair labour practice within the meaning of Item 9 of Schedule IV of the Act in view of the judgment of the Supreme Court in *S. G. Chemical's case (supra). .....*"

28. In the backdrop of the aforesaid exposition of law, reverting to the facts of the case, there is material on record, which is by and large uncontroverted, to indicate that the complainant had raised a demand by communication dated 3rd March, 2017 (Exhibit-C) to the affidavit-in-reply. The said

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demand was followed by a communication addressed to the Deputy Commissioner of Labour (Conciliation) dated 9th March, 2017 seeking his intervention (Exhibit-C1). The said demand was admitted into conciliation as evidenced by the letter dated 12th May, 2017 (Exhibit-E). Failure report followed much latter on 6th September, 2017 with an observation that failure was noted on 7th July, 2017 and, thus, steps were taken to submit a failure report.

29. It would be contextually relevant to note the Schedule of demand. It reads as under:

> "1) "M/s. Sandoz Private Limited" shall provide gainful employment/work to all the Sales Promotions Employees designated as Professional Service Representatives (PSR) or any such designation employed by it and shall provide all logistical support/supply of products in the market to enable the Professional Service Representatives to promote the products of the company."
>
> 2) In the event M/s. Sandoz Pvt. Ltd. cannot provide gainful employment/work to all the Sales Promotion Employees designated as (PSR) then M/s. Novartis India Ltd. shall provide work/employment to the PSR and be responsible for their continued employment and service conditions."

30. The existence of the industrial dispute concerning the PSRs is required to be appreciated in the context of the aforesaid Schedule of demand. What the complainant demanded was gainful employment/work to all PSRs and in the event Sandoz was unable to provide work to PSRs Novartis India Ltd. should provide work/employment to PSRs and be

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responsible to their continued employment and service conditions. The dispute which was thus under conciliation before the conciliation officer was the impending threat of being rendered without work. This essential nature of the dispute deserves to be kept in view. Whether retrenchment amounts to a change in condition of service would depend upon the nature of the industrial dispute pending before the Court, Tribunal or Authority. The prohibition is against altering conditions of service in regard to any matter connected with the dispute. It is the nexus between the matter in dispute and the action complained of, that determines the applicability of Section 33(1)(a) of the Act, 1947. I am, therefore, not persuaded to accede to the proposition sought to be canvassed by Mr. Talsaniya that with retrenchment there is cessation of service environment and thus there could be no change in condition of service.

31. Conversely, I find substance in the submission of Mr. Singhvi that the retrenchment, in the circumstances of the case, squarely altered the condition of service as the PSRs were demanding work and they were eventually terminated.

32. The issue as to whether the proceedings were in fact pending before the conciliation officer need not detain the Court. As noted above, the failure was recorded by the

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conciliation officer in the report dated 6th September, 2017 only. It records the fact that the conciliation officer noted the failure on 7th July, 2017. It can not be urged that the conciliation proceeding came to an end on the day the conciliation officer noted the failure. The controversy as to the point of time up to which the conciliation proceeding continues under Section 12 of the Act, 1947 is no longer *res intergra.* In the case of ***Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad***[3]**,** the Supreme Court ruled that a conjoint reading of the provisions contained in Section 12(4) and Section 20 of the Act, 1947 makes the legislative intention clear that the conciliation proceedings initiated under Section 12(4), whether of a discretionary nature or a mandatory nature, shall be treated to have continued and only to have concluded when the failure report reaches the appropriate Government. In the case at hand, the retrenchment order was passed before the failure report could be prepared and forwarded to the appropriate Government.

33. While granting an equitable relief, the conduct of the parties also assumes material significance. The learned Member, Industrial Court, was within his rights in critically examining the conduct of the Sandoz in passing the retrenchment order after a copy of the ULP complaint and notice

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3 1999(6) SCC 275.

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about the application for interim relief being moved was served and that too a day before the date of motion for interim relief.

34. In any event, the learned Member, Industrial Court, in the backdrop of the facts of the case has given an option to the petitioner to furnish security if it is not in a position to provide the work. The Industrial Court has exercised the discretion keeping in view of the principles which govern the grant of interim relief and the peculiar facts of the case as well. Hence, I do not find any justifiable reason to interfere with the discretionary order in exercise of extraordinary writ jurisdiction.

35. Resultantly petition fails.

36. Hence, the following order:

: O R D E R :

(i) The petition stands dismissed with costs.

(ii) Rule stands discharged.

[N. J. JAMADAR, J.]

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