22

LABOUR MANAGEMENT RELATIONS

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I INTRODUCTION

IN THE year under survey, there have been a few judgments of the Supreme Court reported under the Industrial Disputes Act, 1947, which are the subject matters of analysis in this chapter. Three judgments of two high courts have also been analysed. No judgment of the apex court has been reported either under the Trade Unions Act, 1926 or under the Industrial Employment (Standing Orders) Act, 1946 in the year 2023.

During the said year, the Supreme Court dealt with various issues, namely, jurisdiction of labour court or tribunal regarding disputes of non-employment of workman in a reference under section 6H of the U.P. Industrial Disputes Act, 1947 (same as section 10 of the ID Act); scope of sections 33(1)(b) and 33C(2) of Industrial Disputes Act,1947; issues relating to 'retrenchment' and 'regularisation' and reasonableness of section 36(3) which prohibits engagement of the services of a legal practitioner in labour matters before conciliation officer and labour courts/ industrial tribunals.

The apex court[1] has emphasised the importance of scrutinising the permanent particulars of the workmen with precision by the registry of the courts, at all levels, to ensure that the benefits that accrue to workmen under awards/orders of the courts reach them after having gone through protracted litigation in the judicial hierarchy and have finally succeeded in vindicating their causes and entitlements.

II INDUSTRIAL DISPUTES ACT, 1947

Reference

Jurisdictional hurdles: Barrier to access to justice for worker

In *Hind Filters Ltd.* v. *Hind Filter Employees' Union*,[2] the management of the Hind Filters Ltd. applied to the labour commissioner for permission under

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1. *Creative Garments Ltd.* v. *Kashiram Verma* (2023) SCC OnLine SC 277(hereinafter, *Creative garments Ltd.*).
2. (2023) SCC OnLine SC 1135.

section 25-N of Chapter VB of the Industrial Disputes Act, 1947 (hereinafter, ID Act) to retrench 45 workmen which was effused by him. The workmen, thereafter, raised demands regarding wage increments and other benefits. The dispute was referred by the appropriate government to the labour court for adjudication.

Before the labour court, the management raised the preliminary objection to the reference contending that a dispute relating to wages and other benefits affecting 100 or more workmen necessarily needs to be adjudicated by the industrial tribunal and not by the labour court in terms of the powers of the appropriate government under section 6H of the U.P. Act (same as section 10(1) read with Schedule II and III of the ID Act). It further contended that in the light of the said legal position, the reference to the labour court was bad in law. It made an application to the labour court to allow it to place on record material to the effect that the management of Hind Filters Ltd. had employed more than 100 workmen and it was for this reason that it had earlier sought permission of the labour commissioner to effect retrenchment of its 45 workers. The labour court allowed the workers to place on record various documents including records from the Employees' State Insurance Corporation and the Life Insurance Corporation and to lead evidence to the effect that it had in its employment 100 or more workmen so that it could prove that the reference was incompetent.

The management challenged the aforesaid order of the labour court in a writ petition before the High Court of Madhya Pradesh. The high court allowed the management to approach the labour court for correction of factual errors but limited the scope to mere factual corrections rather than permitting new evidence to be led by it.

In the special leave petition against the order of the high court restricting the management to carry out factual correction only before the labour court in the material placed before it, the Supreme Court examined the jurisdictional issue between the powers and subject matters of adjudication of labour court and industrial tribunals. It noted that the matters relating to wages and allowances, which were the major subjects of dispute, fall under the third schedule of the ID Act, and if more than 100 workmen are affected, the dispute must be referred to the industrial tribunal, not the labour court. The court observed that in the present case, the labour court had wrongly assumed jurisdiction, as the available evidence suggested that the company had more than 100 workmen employed by it at the relevant time. The management had produced official records from 1999-2000 to 2009-2010 showing that more than 100 workmen were employed, which was *prima facie* evidence in support of their claim. The court observed that the high court was not correct in putting limitations on the power of the labour court to make factual corrections, as it prevented the management from leading crucial evidence affecting the jurisdiction of the labour court. The workmen would not suffer prejudice, as they would still have the opportunity to cross-examine witnesses and present their case.

The Supreme Court set aside the order of the high court and remitted the matter to the labour court, directing it to reconsider the issue afresh, allowing the management to present its evidence on the jurisdictional issue. It further directed the labour court to resolve the matter within six months.

This judgment highlights the importance of jurisdictional issues in industrial disputes and reinforces the necessity of adhering to the jurisdictional requirements under the ID Act. By setting aside the order of the high court restricting the power of the labour court in allowing the evidence to be produced and remanding the case for fresh adjudication, the Supreme Court ensured that legal technicalities do not override substantive justice. However, this case also reflects on the long and exhausting nature of litigation in labour disputes, where procedural complexities often become a tool to delay or deny justice to the working class.

For workers, this decision presents a mixed outcome. On the one hand, it reinforces the need for disputes to be heard in the appropriate forum, ensuring that disputes involving major subject matters affecting more than 100 or more workmen are adjudicated by industrial tribunals, which are presided over by more experienced judicial officers. On the other hand, it reflects how jurisdictional challenges and prolonged litigation can become a tactic to delay access to justice for years or even decades. The fact that in the present case many workers retired or died even before the final resolution demonstrates the urgency for simplifying the procedures and bringing in major reforms in the adjudication processes. The Industrial Relations Code, 2020, provides not much relief in this direction. Although, it has abolished the institution of labour court but it has envisaged that every industrial tribunal shall consist of two members to be appointed by the appropriate government, out of whom one shall be a judicial member and the other, an administrative member.[3] The object of having judicial member and administrative member is to have the benefit of judicial and administrative experience of the presiding members in deciding industrial disputes but the course provided by the code in the event of difference between two members is very time consuming and cumbersome. The third member is to be appointed by the appropriate government after a reference to it is made by the tribunal.[4] It is going to be at time-consuming exercise and will defeat the purpose underlying the code which is expeditious disposal of the disputes.

This case also highlights the power imbalance between the employer and the worker in legal proceedings. Employers, with access to legal resources, can challenge procedural aspects at multiple stages, whereas workers—often lacking financial and legal support—are forced into protracted litigation, undermining the very purpose underlying a welfare legislation. If such delays in judicial processes continue unabatedly, the right to fair wages and employment security become illusory.

3. S. 44(2) of the Industrial Relations Code, 2020.

4 Industrial Relations Code, 2020, Ss. 47(2) and (3).

This judgment should serve as a reminder to the industrial adjudicators that the procedural rules are expected to be facilitators rather than barriers in having access to justice. There is a need for structural reforms to expedite labour dispute resolutions, including mandatory timeframes for adjudication, quality legal aid to the worker, and a streamlined mechanism to determine jurisdictional challenges at an early stage. Only then can labour laws achieve their true objective of ensuring social and economic justice to the working class.

Requirement of having permanent residential particulars of workmen

In *Creative Garments Ltd*.,[5] the Supreme Court was hearing a civil appeal against the judgment and order of the division bench of the High Court of Bombay which approved the judgment of the single judge of that court upholding the award of the labour court ordering reinstatement of workman with continuity of service and full back wages. In the Special Leave Petition of the management, the Supreme Court issued notice to the workman in 2010 which remained unserved as a result of which *Dasti* service was also permitted to be served on workman through the nearest civil court or the trial court. In 2011, an affidavit of service of the notice to the workman was filed before the court by the management but he did not appear, which gave the impression to the court that he was not interested to defend the pending litigation. A perusal of the award of the court showed that the address of the workman was through some union and he had not furnished his own address. On going through the order passed by the single judge of the high court, the court found that the respondent workman was represented by counsel before the high court. It showed that the counsel knew about the challenge to the award of the labour court and also the fact that the writ petition of the management was dismissed by the high court. A careful look at the 2006 order of the division bench showed that the court had recorded that the management was willing to reinstate the workman and had undertaken that he shall be informed about this to enable him to report for duty. In the light of this undertaking, the management confined its challenge in the high court only to the extent of payment of back wages which was admitted to that extent.

It seems that thereafter the management had sent various communications to the workman by registered posts/courier. However, there was no response received from him. When the matter was taken up in October, 2007, the division bench of the high court recorded the statement of the counsel of the workman that he will report for duty on November 5, 2007 at 10:00 A.M. The court directed that on his reporting for duty, he shall be permitted to join immediately.

Since the workman did not report for duty on that day, the management sent another letter to the workman informing him that if he did not report for duty on December 26, 2007, it shall be presumed that he was no more interested to join the duty. He was also asked to furnish his permanent address. When the matter was taken up again in the high court, the counsel for the management informed the

5 *Supra* note 1.

court that respondent had not reported for duty and it seemed that he was not interested in joining duty and must have been gainfully employed somewhere.

Keeping in view the aforesaid factual matrix, the Supreme Court came to the conclusion that the order of reinstatement with continuity of service and payment of full back wages as awarded by the labour court deserves to be set aside. The court observed that the present appeal could not be kept pending as the conduct of the respondent workman itself established that he was no more interested in the employment or payment of back wages.

Before parting with this case, the court decided to address the issue of directing the authorities entrusted with the duty of implementing various labour legislation to take some corrective steps so that the correct address of the workmen is taken and they are not denied their legitimate entitlements after successfully enforcing their rights under labour laws. The court was conscious of the fact that effective relief to the workman or his family can be granted only if the correct permanent address of the workman is furnished in the pleadings.

The court referred to various labour legislation which requires the workman to furnish his permanent address to enforce his claims. The court noted that under sections 15(2) and 16 of the Payment of Wages Act, 1936, every workman is required to give his permanent address in his claim petition. Under the Employees Compensation Act, 1923, a workman must provide his residential address in Form-F for compensation claims and a permanent address in Form-A for fatal accident claims. Similarly, the Industrial Disputes Act, 1947 requires the workman to mention his address details in Forms-I, J, and K for initiating proceedings. Under the Minimum Wages Act, 1948, an applicant seeking payment of wages must include his residential address in Form-VI, while the Payment of Gratuity Act, 1972 mandates that employees applying for gratuity to provide their full address in Form-I.

Additionally, Order VI Rule 14A of the Civil Procedure Code, 1908 makes it obligatory for parties to furnish and update their addresses in pleadings. Furthermore, the Supreme Court Rules specify in Form-32 of the Supreme Court Handbook that the petitioners and the respondents must provide their complete addresses.

The court underscored the importance of furnishing one's own address as fundamental when seeking relief. The court observed that the representative details that may be furnished by the workman becomes secondary, as the individual may choose to appear in person.

This case seems to be a classic example for showing how callous and indifferent are the processes of the judicial system that the benefits of the judgment and awards do not reach the workmen because of inordinate delays and failure of the processes to secure complete particulars of the parties before admitting their petitions. This indifference to securing permanent addresses of parties has become a normal feature of the adjudicatory system in this country. It is high time that the courts refuse to hear matters without there being correct particulars furnished about the addresses of the parties to ensure that the benefits that ultimately

accrue to the successful party reach it. In the instant case, even when there was an award in favour of the workman ordering his reinstatement and back wages, he did not get any benefit of the award of the labour court which was upheld by the high court and would have been upheld by the Supreme Court as well. This case also shows the indifference and apathy of the union of the workers whose address he had given being its member. The union had failed to keep him and his family abreast of the stage of the proceedings in the high court and the Supreme Court.

Powers of industrial adjudicators under section 11-A

Position prior to enactment of section 11-A

The Supreme Court in *Indian Iron and Steel Company Ltd.* v. *Their Workmen*[6] highlighting the legal position prior to insertion of section 11Ain the Act, had observed thus:[7]

> Undoubtedly, the management of a concern has power to direct its internal administration and discipline; but the power is not unlimited and when a dispute arises, the Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to grant appropriate relief.

The court, however, stated that this jurisdiction of an industrial tribunal to interfere with the managerial prerogative of taking disciplinary action was not of appellate nature, as the 'legislature has not chosen to confer such jurisdiction upon it.'[8] Hence, it could not substitute its own judgment for that of the management. The court, however, held that the industrial tribunal could interfere with the disciplinary action taken by the employer in the following situations:

i. when there was want of good faith;
ii. when there was victimisation or unfair labour practice;
iii. when the management had been guilty of a basic error or violation of the principles of natural justice; or
iv. when on the materials, the finding was completely baseless orperverse

The decision of the court in *Indian Iron and Steel Ltd.* became a classic for the justification of the tribunal's interference with the disciplinary sanctions of discharge or dismissal imposed by industrial employers on delinquent workmen. The court, likewise, insisted that in the matter of inflicting punishment also the employer should act fairly. This power that industrial tribunal exercised in the matter of dismissal and discharge was supervisory in nature akin to that exercise by the high court in the matter of disciplinary jurisdiction under articles 226 and 227 of the Constitution.

In *Hind Construction and Engineering Co. Ltd.* v. *Their Workmen,*[9] the court pointed out that even if the enquiry was proper and valid, if the punishment

6 AIR 1958 SC 130 (hereinafter, referred to as *Indian Iron and Steel Ltd*.).

7 *Id*. at 139.

8 *Bisra Stone Lime Co. Ltd.* v. *Industrial Tribunal,* (1970) I LLJ 626 at 628 (SC).

9 AIR 1965 SC 917.

was shockingly disproportionate, the tribunal might treat the imposition of such punishment as itself showing victimisation or unfair labour practice. In such a case, the labour court or the industrial tribunal will be justified in setting aside the order of punishment. It is important to note here that the choice before the industrial adjudicator in such a case was either to sustain the order of punishment of dismissal, or if found shockingly disproportionate, to set aside the order of dismissal. But it did not have the power to reduce the punishment or substitute it with one which it thought to be just and fair.

The legal position emerging from the judicial decisions prior to the incorporation of section 11A in the Industrial Disputes Act prior to December 15, 1971 as summarized by the Supreme Court itself in *Workmen of Firestone Tyre & Rubber Co. of India Pvt. Ltd.* v. *Management*[10] was that the adjudicatory jurisdiction dealing with disciplinary cases was confined merely to see whether the employer did not act *mala fide*, or as a measure of victimisation or unfair labour practice in the manner of initiating action and inflicting the punishment, and the enquiry officer had not violated the rules of natural justice and his findings were not baseless or perverse. In the absence of these infirmities, it was beyond the reach of the tribunal to interfere with the managerial action. The issues whether the material before the enquiry officer was adequate or not, or whether a particular witness upon whom reliance was placed by the enquiry officer should have been believed or not, were matters for the consideration of the enquiry officer alone. Similarly, the legal position was well settled that punishment was the 'managerial prerogative' and could not normally be interfered with by examining its propriety or adequacy, except in cases where the punishment was shockingly disproportionate to the act of misconduct committed by the delinquent workman. Further, in the case of defective enquiries or no enquiry, the management had the right to adduce evidence for the first time before the tribunal in which case it was the satisfaction of the tribunal, that was conclusive, and not that of the management, as to whether a misconduct was proved or not. This opportunity to adduce evidence had to be sought at the earliest. This position considerably changed, as will be noticed below, after the powers of the industrial adjudicator were enlarged by the legislature by incorporating section 11A in the Industrial Disputes Act.

Reasons leading to incorporation of section 11A in the Act

The International Labour Organization (ILO) in its Recommendation no.119 concerning 'termination of employment at the initiative of the employer' adopted in June, 1963, had recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination, among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar

10. (1973) 1 SCC 813. The newly inserted provision *i.e.* s.11A of the Industrial Disputes Act,1947 which came into force with effect from Dec. 15, 1971 enlarged the scope of the power ofinterference by the industrial adjudicator in the matters of dismissals and discharges referredto it under s. 10 of the Act.

body, and that neutral body concerned should be empowered to examine the reason given for the termination and the other circumstances relating to the case and render a decision on the justification of his termination. The ILO further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief. The Government of India in accordance with these recommendations considered that the powers of the labour court or the industrial tribunal in adjudication proceedings relating to discharge or dismissal of a workman for an alleged misconduct should not be limited and that the labour court or the industrial tribunal should have the power, wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it may deem fit or give such other relief to the workman, including the award of any lesser punishment in lieu of dismissal or discharge as the circumstances of the case may require. For this purpose, a new section 11A was inserted in the Industrial Disputes Act, 1947 by the Industrial Disputes (Amendment) Act, 1971 (Act No. 45 of 1971) which came into force with effect from December 15, 1971.

Position after the enactment of section 11A

The position with respect to the powers of the labour court and industrial tribunal in matters of reference of the disputes relating to dismissal and discharge underwent a sea change with the incorporation of section 11A in the ID Act. This change in the legal position has been succinctly brought out by the Supreme Court in *Firestone Tyre and Rubber Co.* Section 11A had the effect of altering the legal position. It gave power to the labour court or the industrial tribunal for the first time to differ both on the findings of the misconduct arrived at by the employer as well as the punishment imposed by him. The tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the evidence relied upon by the employer established the misconduct alleged against the workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence has now given place to a satisfaction being arrived at by the tribunal that the findings of misconduct are correct. What was earlier largely in the realm of satisfaction of the employer, ceased to be so and now it is the satisfaction of the tribunal that finally decides the matter. As stated earlier, under section 11A, though the tribunal may hold that the misconduct is proved, it may nevertheless be of the opinion that the order of discharge or dismissal for said misconduct is not justified. Elaborating on this issue, the court observed:[11]

> In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment

11. *Id*. at 832.

> and alter the same *has been now* conferred on the Tribunal by Section 11A.[12]

The court held that the position, however, remains unchanged in cases where there is either no enquiry held by the employer or if the enquiry is held to be defective, and it is open to the employer even now to adduce evidence for the first time before the tribunal justifying the order of discharge or dismissal. Of course, an opportunity will have to be given to the workman to lead evidence contra. The employer has to ask for such an opportunity at the stage of filing of its reply to the statement of claim or by moving an application for leading such evidence and that must be before the tribunal decides as a preliminary issue the validity of the enquiry proceedings, if held. The procedure may be time-consuming, elaborate and cumbersome, but this right of the management to sustain its order before the tribunal in case no enquiry has been held, or if the enquiry is held to be defective, has been given judicial recognition over a long period of years for obvious reasons. The reasons for giving recognition to such right is to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in resolution of industrial disputes.

It is submitted that this approach of the court is consistent with the object of the Act that there should be no prolixity and inordinate delay in adjudication of the disputes. The court in *Firestone Tyre and Rubber Co.,* cognizant of the fact that such wide powers have now been conferred on the labour court or the industrial tribunal, pointed out that the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account by the tribunal. Such restrictions are found in the proviso to section 11A. The proviso emphasizes that the tribunal has to satisfy itself one way or the other regarding the misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record.' The court held that materials on record before the tribunal by and large are:

i. the evidence taken by the management at the enquiry and the proceedings of the enquiry, or
ii. the above evidence and in addition, any further evidence led before the tribunal, or
iii. evidence placed before the tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen *contra*.

The court held that the expression 'fresh evidence' which the tribunal cannot take into account by virtue of the proviso has to be read in the context in which it appears, namely, as distinguished from 'materials on record' explained above. If so read, according to the court, the proviso does not present any difficulty at all. In subsequent cases, the court has, by and large, followed the aforesaid explanation of 'materials on record'. However, the explanation of 'materials on record' given in

12 Emphasis supplied.

Firestone and also the phraseology used in the *proviso* to section 11A are far from satisfactory.

In *Gujarat Steel Tubes Ltd.* v. *Gujarat Steel Tubes MazdoorSabha*,[13]the Supreme Court by majority held that the powers exercised by the labour court and industrial tribunals under section 11A over the disciplinary jurisdiction of the management were also available to a 'voluntary arbitrator' under the Act at par, while dealing with industrial disputes in respect of managerial actions of dismissal and discharge. The court heavily relied on the ILO recommendations as accepted by India as the basis for puttingthe arbitrator at par with industrial tribunals and labour courts empowered to exercise wide powers under section 11A of the Act. This was done to achieve uniformity, *inter alia,* in the matter of exercising powers in disciplinary matters relating to discharge and dismissals to encourage parties to resort to voluntary arbitration as an industrial dispute resolution mechanism.

In recent years, in many cases that have reached high courts or the Supreme Court serious infirmities are visible in judicial decisions at both levels which is due to the failure on the part of the constitutional courts to appreciate the distinction between the powers exercised by the Central Administrative Tribunal (CAT) under the Administrative Tribunal Act, 1985, in the disciplinary matters and the high courts in the writ jurisdiction under Article 226 of the Constitution on one hand and the powers of the labour court or the industrial tribunal under section 11A of the Act on the other. The powers that CAT exercises are the same as were and are exercised by the high court under article 226 of the Constitution *i.e.*, supervisory powers. Only on limited grounds can the CAT or for that matter the high court in its writ jurisdiction interfere with the punishment order passed by the employer. But such limitations do not apply in the case of labour court or industrial tribunal under section 11A of the Act where they exercise much wider power in as much as the satisfaction of the management both in respect of proving of the misconduct and quantum of punishment imposed by the management is substituted by the satisfaction of the labour court or the industrial tribunal. They exercise power akin to that of an appellate forum and not as supervisory powers exercisable by CAT or the high court. This distinction is very important and is often overlooked by the constitutional courts.[14]

A division bench of the High Court of Delhi in *Punjab National Bank* v. *Sneh Aggarwal*[15] has been able to properly appreciate this subtle distinction between the powers under article 226 exercised by the high court and the powers of the industrial tribunal under section 11A of the Act. The division bench in the Letters Patent Appeal against the judgment of a single judge set aside the said

13 (1980) 2 SCC 593.

14 For a detailed discussion, see Bushan Tilak Kaul, "Disciplinary action and powers of the industrial adjudicator: A critique of the judicial intervention" 49 *JILI* 309 at 340-356 (2007); also see, Bushan Tilak Kaul, XLI *ASIL* 2005 Labour Law- I (Labour Management Relations) 433 at 453-456.

15 (2023) SCC OnLine Del 4368.

order wherein he had interfered with the punishment of dismissal as upheld by the industrial tribunal by substituting it with compulsory retirement. It observed that the power of the high court was that of supervisory jurisdiction, limited in scope and the single judge could not have interfered with the award of the industrial tribunal which was a well-reasoned one. It upheld the action of the management against the employee of the bank who had been proved to the satisfaction of the tribunal of having committed fraud for securing a personal loan from the bank in which she was employed. The division bench of the high court held that the tribunal was right in holding in its award that her services could not have been continued because the bank lost confidence in her integrity and therefore, the punishment of dismissal was proportionate to the gravity of the misconduct.

Last drawn wages under section 17-B

Section 17-B of the Act entitles a workman to receive thelast drawn wages during the period of challenge when the award of reinstatement is challenged in the high court or the Supreme Court, if he was not gainfully employed during the pendency of the proceedings. The burden of proof whether he was gainfully employed is on the employer. In *Unitas Foods Private Limited* v. *Gyanender*,[16] a division bench of the High Court of Delhi was dealing with an order passed by a single judge of the court, ordering the employer to pay the last drawn salary to the workman during the pendency of the writ petition in which there was a challenge to the award of the labour court holding termination of the service of the workman as illegal and ordered his reinstatement, back wages and continuity of service. This Letters Patent Appeal was filed in the following facts and circumstances:

The workman was employed as executive sale purchase/field worker in 2008 and his services were terminated in 2015. The last drawn salary of the workman was Rs.12,500 per month. He challenged the order of termination before the labour court on the ground that it was illegal. He sought the relief of reinstatement, back wages and continuity of service which were granted by the labour court by an award. The management challenged the award in a writ petition before a single judge of the high court. The workman moved an application under section 17-B of the Act seeking the relief of grant of last drawn wages during the pendency of the writ petition. His application was opposed by the management on the ground that the workman had not produced any bank records to demonstrate that he was not gainfully employed. It was further submitted by the management before the single judge that the workman was gainfully employed as court clerk in a district court in Delhi and that company had to stop its operations during the COVID-19 period due to financial constraints. The single judge allowed the application of the workman under section 17-B of the Act. It is this order which was assailed in the appeal before the division bench of the court.

Before the division bench, the management reiterated its submissions which were made before the single judge but did not substantiate its submissions that the workman was gainfully employed by producing any document in support. It

16. (2023) SCC OnLine Del 3049.

dismissed the writ appeal of the management on the ground that it was for the management to establish before the single judge or by producing documents before it, to establish that the workman was gainfully employed. The division bench referred to the decision of the Supreme Court in *Dena Bank* v. *Ghanshyam*[17] to explain the object behind section 17-B which is to mitigate the hardships that would be caused to the workman due to the delay in the implementation of the award of reinstatement where the management impugns the said award in the high court or the Supreme Court.

Coming back to the case at hand, the division bench found that the material of record of the case disclosed that the workman had denied that he was employed anywhere during any period after his services were terminated. The court held that the onus of proving that the workman was gainfully employed was on the employer after the workman had filed his affidavit that he was not gainfully employed anywhere. The court observed that there was no material placed on record by the management to show that the workman was gainfully employed. In these circumstances, the court had no alternative except to reject the appeal filed by the employer. It accordingly dismissed the writ appeal of the management.

Issues of violation of retrenchment law and regularisation

The judgment of the Supreme Court in *Workmen, FCI Executive Staff Union* v. *Employer in relation to the management of the FCI,*[18] is welcome and a good example of the judicial sensitivity. The court has not allowed technicalities of law to deter it from doing complete justice in the matter. The court rejected the pedantic approach adopted by the division bench of the high court.

In this case, there was a delay of 30 years before this matter involving labour management litigation could culminate into a final decision in the matter. Although, labour matters were intended to be decided expeditiously but alas! the said object has eluded us so far. Here, the Central Government was the appropriate government. In exercise of its power under section 10(1)(d) of the Act, it referred the industrial dispute raised by the appellant union espousing the cause of 21 casual workers for adjudication. The reference made by the central government to the industrial tribunal read as under:

> Whether the action of the management of Food Corporation of India, Patna, retrenching the services of S/Shri Sashi Shankar and 20 others (listen closed) is justified and legal? If not, what relief the workmen concerned are entitled to?

Upon considering the pleadings and evidence adduced by the parties to the dispute, the tribunal found that the workmen in question were engaged as casual workers with the Food Corporation of India (FCI) and their retrenchment was void being in flagrant violation of the mandatory provisions of retrenchment law under the Act. Further, the tribunal also found that an earlier award directing reinstatement

17 AIR 2001 SC 2270.
18 (2023) 8 SCC 116.

and regularisation in service of casual workers was upheld by the high court. In these circumstances, the relief granted by the tribunal was a direction to the management to regularise the services of 21 casual workers against the vacancies available in Class IV posts. However, taking note of the fact that the workmen had not rendered service for a long time, the tribunal awarded only 75% of the back wages to these 21 workmen payable within a time frame.

Aggrieved by this award, the management of the FCI approached the High Court of Jharkhand by filing a writ petition assailing the award. The single judge of the high court passed an interim order staying the operation of the award subject to the FCI continuing to pay full wages last drawn by the workmen. Thereupon, the FCI started paying each of the workmen Rs. 507 per month, claiming that they were entitled only to minimum wages. The workmen disputed this and filed a contempt petition against the management before the high court which held that if the management failed to comply with the condition of stay within two weeks, the stay order granted by it against the operation of the award would automatically stand vacated and the workmen would be entitled to take steps for implementation of the award. Thereafter, the FCI absorbed these workmen in regular service and paid 75% of their back wages from the date of the retrenchment till the date of the award and thereafter full wages, applicable to Class IV, for the period thereafter. This compliance was made subject to the final outcome of the writ petition.

Shortly thereafter, the single judge of the high court dismissed on merits, the challenge of the FCI to the award of the tribunal. The judge affirmed the findings of the tribunal that the workmen concerned had worked in FCI for 240 days in the preceding 12 months and were then stopped from performing their duties without complying with the mandatory provisions of section 25-F of the Act. The court also held that the management did not controvert the claim of the workmen that similarly situated persons had been regularised in service pursuant to the earlier order passed by it. Further, the court observed that the FCI could not cite any factor to distinguish the cases of the workmen in question from those of the workmen so regularised. However, the single judge held that a casual employee who had worked for 240 days in the preceding calendar year would only be entitled to reinstatement in service, if his termination was without notice or compensation in lieu thereof, as provided under Section 25-F of the Act, and he would not be entitled to seek regularisation in service if the reference did not include the issue of regularisation. The court also held that since the management had chosen to comply with the impugned award, without abiding by the condition imposed in the interim relief, and as the workmen concerned had been availing the benefits of the impugned award for more than 18 years, it would cause great hardships to the workmen if the position was changed at that stage. Accordingly, it dismissed the writ petition and upheld the award in its entirety.

The FCI filed a Letters Patent Appeal against this judgment before a division bench of the high court which modified the order under appeal by quashing the award to the extent that it directed regularisation of the services of the workmen.

The modification was made on the ground that such relief could not be sustained when the terms of reference did not include the issue of regularisation of these workmen. The division bench disposed of the appeal by setting aside the award of the tribunal ordering regularisation of the casual workmen as upheld by the single judge of the high court but upheld the award insofar as it had directed the management to pay 75% of the back wages to the workmen.

The FCI as well as the workers union approached the Supreme Court by way of special leave to appeal. While the workers union was aggrieved by the denial of regularisation of their service, the FCI was against the direction of reinstatement and payment of 75% of the back wages to the said workmen. While issuing notice in the SLP of the workers union, the Supreme Court directed that operation of the division bench judgment shall remain suspended.

The Supreme Court noticed from the judgment of the division bench that the management of the FCI had not assailed that part of the award giving reinstatement and back wages to the extent of 75% and that the management was aggrieved by the award pertaining to regularisation only. In the light of this clear recording, the management could not be allowed to agitate the issue of reinstatement and the back wages in the SLP before it and the same was liable to be dismissed on this short ground itself.

In respect of the appeal filed on behalf of the workmen, the only issue that the Supreme Court had to consider was the regularisation of service of these workmen and the legality of the award to the extent of granting such relief. The court referred to the observations of the single judge who himself concluded that there should not have been an order of regularisation in service by the tribunal but he chose not to interfere with the award as the workmen had rendered regular service for about 18 years and any interference at that stage would work harsh upon the workmen. On the other hand, the division bench was of the view that once the court came to the conclusion that a wrong order was passed, it would be its sovereign duty to rectify such mistake rather than perpetuate the same. The Supreme Court observed that the division bench had failed to consider the decisive features that had weighed with the single judge while upholding the award of the tribunal *vis* the fact that the FCI chose to fully implement the award during the pendency of the writ petition and that the workmen had been enjoying the benefit of this fact for 18 years and to disturb the said position would be harsh on them. The apex court did not find it proper to denude the workers of this benefit which they had enjoyed for long years. The court referred to the office orders of the respondents in pursuance of the interim order issued by the single judge of the high court where under initially it had ordered the reinstatement of the workers with 75% of the back wages but subsequently after the contempt petition was filed against officers of the FCI, the FCI had issued a corrigendum in which the word 'reinstated' was to be read as 'absorbed.'

The court did not accept the feeble plea of the management of the FCI that it was compelled to comply with the award under the threat of contempt. The court

observed that the FCI having committed itself to this course of action on its own, *albeit* by making it subject to the result of the writ petition. The matter remained pending for 18 long years and at no point of time did the FCI seek expeditious disposal of the writ petition after complying with the interim order and merrily allowed the situation to continue for 18 long year still the dismissal of the writ petition.

The Supreme Court observed that the FCI filed a writ petition challenging the award passed by the tribunal but having secured a conditional interim relief therein, it chose to implement the impugned award when it was under no compulsion to do so. As can be seen from above, the FCI did not only reinstate the workers in service but went further and absorbed them in regular service which action is squarely attributable to the will and volition of the FCI itself. Such absorption was not at all required under the interim order of the high court. The court was of the view that having allowed the workmen to put in regular service to his own benefit for two decades, it did not have an indefeasible right to continue to allow operation of the award and at the same time canvass challenge to the award, merely because it made its compliance with the award conditional long ago. Had the FCI not implemented the award and absorbed the workmen, creating a legitimate expectation and right, it was no longer open to the management to turn back the clock. The court found it unfortunate that the division bench has overlooked and lost sight of these crucial aspects while dealing with the appeal of the FCI.

In view of the aforesaid facts and circumstances, the Supreme Court held the judgment and order of the division bench was pedantic, set it aside and upheld the award of the tribunal as upheld by the single judge of the high court. The court found enough justification for the single judge to dismiss the writ petition, on the grounds that he did, thereby upholding the award of the tribunal. The court stated that the present case was covered by the well settled principle that no party can be allowed to "approbate" and "reprobate" at the same time which principle has been recently reiterated in *Union of India* v. *N. Murugesan*.[19] The court observed that this principle has an element of fair play built in it and is a specie of estoppel dealing with the conduct of a party.

Pendency of proceedings

In *Rajendra s/o Dwarkanath Bakre* v. *Asstt. Labour Commissioner (Central)*,[20] the petitioner sought a declaration that the order of dismissal passed against him by the management being in breach of section 33(1)(b) of the ID Act was void *ab initio* and that he was entitled to continuity of service. This relief was sought by the petitioner in the following facts and circumstances: The petitioner was appointed as a clerk in a bank and his services were terminated by it on February 12, 1991. He challenged his order of termination before the Central Government Industrial Tribunal (CGIT). The CGIT set aside the order of termination

19 (2022) 2 SCC 25.

20 (2023) 3 Mh.L.J. 620.

declaring it as illegal and ordered his reinstatement along with continuity in service and all consequential benefits *vide* its award dated November 7, 2012. He was reinstated in service on December 2, 2013.

According to the petitioner, the bank reinstated him with the sole purpose of harassing him and creating a false record of his absence so as to treat it as a case of unauthorized absence for initiating in future a disciplinary action against him. He approached the conciliation officer to initiate a conciliation proceeding in respect of his complaint of harassment by the management of the bank. The conciliation officer initiated conciliation proceedings in this regard on December 10, 2014. During the pendency of these conciliation proceedings, the bank issued an order of punishment dated October 1, 2015 dismissing the petitioner from the services of the bank for acts of misconduct of unauthorized absence, insubordination and making false complaints against the bank. On the same day of the order of dismissal, the petitioner approached the conciliation officer and submitted an addendum to the complaint which was pending under section 33-A of the Act. The conciliation officer refused to take cognizance of this subsequent grievance as regards violation of section 33-A of the Act on the ground that the representation had not been filed through a registered trade union. The conciliation officer concluded the proceedings on September 23, 2015.

The petitioner filed a writ petition in the High Court of Bombay challenging the said response of the conciliation officer. The high court held that the response of the conciliation officer refusing to take cognizance of the subsequent grievance was unsustainable in law showing complete ignorance of section 33-A of the Act. It restored the representation of the petitioner and ordered that the matter may be assigned to some other conciliation officer for consideration in an unbiased manner. The court allowed the writ petition of the petitioner by imposing costs of Rs. 3,000 on the conciliation officer.

The new conciliation officer recorded failure of the conciliation proceedings and forwarded his failure report to the appropriate government on November 3, 2017 which was received by the appropriate government on November 23, 2017. The petitioner filed a writ petition for a declaration that the order of dismissal dated Ocober 1, 2015 having been issued during the pendency of the conciliation proceedings was null and void, which entitled him to the necessary reliefs.

It was the case of the petitioner before the high court that the conciliation officer had initiated the proceedings for conciliation on December 10, 2014 and admittedly the said proceedings were pending when the order of dismissal dated October 1, 2015 came to be issued. He had made a complaint on the very day of dismissal as an addendum to the existing complaint of harassment by the bank under section 33-A of the Act. The high court in its order in the earlier petition had specifically held that the conciliation officer had refused to take cognizance of the additional complaint without taking into consideration the scope of section 33-A of the Act. As a consequence, the conciliation proceedings that were pending stood transferred to the new conciliation officer, who submitted his failure report on November 3, 2017 and which was received by the appropriate government on

November 23, 2017. In terms of section 20(2)(b) of the Act, the conciliation proceedings continued to be pending till November 23, 2017, the day the new conciliation officer's failure report was received by the appropriate government. Thus, the order of dismissal dated October 1, 2015 was in violation of section33-A of the Act and in the light of the law laid down by the Supreme Court in a *catena* of decisions,[21] he was entitled to the relief of reinstatement, back wages and continuity of service.

Opposing the reliefs prayed for by the petitioner, the bank submitted that he had filed representation dated September 24, 2014 with regard to non-payment of wages. The conciliation officer initiated the conciliation proceedings and after considering the pleadings of the parties concluded the proceedings on September 23, 2015 and submitted his failure report. Thus, the closure of the conciliation proceedings had preceded the order of dismissal dated October 1, 2015. There was, therefore, no conciliation proceedings pending before the conciliation officer on October 1, 2015 and therefore there was no violation of section 33(1)(b) of the Act.

After considering the rival submissions and also on perusal of the documents filed before it, the following issues arose for its consideration:

> (i) Whether the conciliation proceedings initiated on 10-12-2014stoodconcluded on 23-9-2015 as held by the Assistant Labour Commissioner or whether the same are required to be treated as concluded only on 23-112017 when the failure of conciliation report was received by the Appropriate Government?
>
> (ii) Whether the conciliation proceedings were pending on 1-10-2015 when the order of dismissal came to be issued by the bank?
>
> (iii) If the order of dismissal dated 1-10-2015 is found to be in violation of section 33(1)(b) of the Act of 1947, what is the effect thereof?

In respect of issue no.1, the court on perusal of the records of the case found that the petitioner had initially filed a representation on September 22, 2014 to the Assistant Labour Commissioner (hereinafter the conciliation officer) alleging that the management had resorted to unfair labour practice by not paying him his wages, by treating his absence as unauthorised and by denying payment of wages to him. The conciliation officer on October 14, 2015 issued notice to both the parties. The bank in its reply had taken the stand that in spite of his reinstatement on February 2, 2013 in pursuance of the award of the CGIT as upheld by the high court, the petitioner did not report for duty regularly and as a result of which disciplinary proceedings were initiated during the pendency of the conciliation proceedings. The conciliation officer having closed the conciliation proceedings

21 *Jaipur Zila Sahakari BhoomiVikas Bank Ltd.* v. *Ram Gopal Sharma and others,* (2002) 2 SCC 244 (in short, *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*). *Lokmat Newspapers Pvt. Ltd.* v. *Shankarprasad,* AIR 1999 SC 2423 (in short, *Lokmat Newspapers Pvt. Ltd*); *BajajAuto Limited* v. *Rajendra Kumar Jagannath Kathar and others,* (2013) 6 SCR 301; and *Bhilwara DugdhUtpadak Sahakari* S. *Ltd.* v. *Vinod Kumar Sharma Dead by LRs.* (2011) 10 SCR 819.

on September 23, 2015, the decks were cleared for imposing the penalty of dismissal. Since, the misconducts were serious, the order of dismissal was passed on October 1, 2015 when no disciplinary proceedings were pending.

The court on examining the legal position under the ID Act had no choice but to junk the stand of the bank by simply referring to section 20(2)(b) of the Act which provides that the conciliation proceedings are deemed to be concluded only on the day when the memorandum of settlement is signed by the parties or in case the conciliation officer fails to bring a settlement then on the date when his failure report is received by the appropriate government. Therefore, the factum of the conciliation officer having concluded the proceedings on September 23, 2015 was of no consequence for two reasons. *Firstly*, because the high court directed the conciliation proceedings be continued and transferred to another conciliation officer who continued with the conciliation proceedings and submitted the failure report to the appropriate government on November 3, 2017 which was received by November 23, 2017. *Secondly*, in terms of section 20(2)(b) of the Act, conciliation proceedings are deemed to continue till the failure report is not received by the appropriate government. Therefore, the position in law becomes crystal clear that in the present case the conciliation proceedings were pending on October 1, 2015 and concluded only on November 23, 2017 when the appropriate government received the failure report of the conciliation officer. Therefore, there was violation of section 33(1)(b) of the Act. The court referred to its own judgment in *Andheri Marol Kurla Bus Service* v. *State of Bombay*,[22] where the question arose as to when conciliation proceedings could be said to have concluded under the ID Act. It was held by the court that though under section 12 of the Act it is the duty of the conciliation officer to submit his report within 14 days of commencement of the conciliation proceedings, such proceedings do not come to an end after 14 days but only when the report of the conciliation officer is received by the appropriate government when there is no settlement in view of the provisions of section 20(2)(b) of the Act. Since, the bank here had failed to show that the report of the conciliation officer on September 23, 2015 had been sent to the appropriate government as required under section 20(2)(b) of the Act, the court had no choice but to come to the conclusion that the same were not deemed to have concluded and were pending till the failure report was received by the appropriate government. It is the admitted position here that conciliation proceedings were initiated on December 10, 2014 and in view of the order of the high court, the said proceedings were transferred to another conciliation officer. Thus, on October 1, 2015, when the order of dismissal was passed, the conciliation proceedings were pending. The court referred to the judgment of *Lokmat Newspapers Pvt. Ltd.*[23] where it had in clear terms, held that until the failure report· reached the appropriate government, the conciliation proceedings could not be said to have been terminated. It is not in dispute that failure report by the conciliation officer was sent on November 3, 2017

22 AIR 1959 SC 841.

23 *Supra* note 21.

to the appropriate government and was received by it on November 23, 2017. Thus, when in terms of section 33(1) of the Act, the conciliation proceedings are deemed to have concluded on that date. It is settled law that violation of section 33(1) of the Act attracts penalty under the Act.

Dealing with question no.2, the court observed that charges against the petitioner were with respect to the unauthorised absence which were related to the subject matter of the pending proceedings before the conciliation officer, no action by way of dismissal could have been taken without the express prior permission of the conciliation officer which undisputedly was not taken in the present case. Hence, there was clear violation of section 33(1)(b) of the Act.

In response to the question no.3, the court held that undoubtedly in view of the answers to the question nos. 1 and 2, it was clear that the order of dismissal was passed without seeking permission of the conciliation officer before whom the conciliation proceedings were pending. The said dismissal order therefore was in contravention of section33 (1) (b) of the Act and was invalid or void as was held in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*[24] It was held that the employee would be deemed to have been continued in service entitling him to all benefits available and there was no need of a specific order for his reinstatement. The court held that the order of dismissal dated October 1, 2015 had to be treated as invalid and void for the reason that it had been passed in breach of section 33(1)(b) of the Act. As a consequence, thereof, there was no order of dismissal issued by the bank and the petitioner continued to be in service as before. He was held entitled to all benefits flowing from the aforesaid declaration.

Scope of section 33C (2)

In *Phool Mohammad* v. *Executive Engineer, Electricity Urban Distribution*,[25] the workman had sought reference of his dispute relating to his non-employment to the labour court. The labour court answered the reference in his favour directing his reinstatement and also payment of back wages of Rs. 8,000/- per month. The management impugned the said award before the high court in a writ petition which was dismissed after it was kept pending for 11 long years. It also appears that during the interregnum, the operation has been stayed by the high court.

After the award of the labour court was upheld by the high court, it seems the management did not implement it with the result that the workman had to make representations for honouring the award but without success. Ultimately, he approached the labour court yet again for calculation of his dues and for directions to the management to pay the same under section 6H of the U.P. Industrial Disputes Act (which corresponds to section 33C(2) of the ID Act), which is an execution proceeding. The labour court calculated back wages and directed payment of Rs. 8,000/- per month in terms of the earlier award of the labour court.

24 *Ibid*.

25 (2023) SCC OnLine SC 1722.

The management, it seems, challenged the directions of the labour court before the high court in a writ petition and the high court set aside the directions of the labour court. In the meantime, intriguingly, the management issued an office memorandum indicating that the appellant would be treated as a muster roll employee.

The appellant workman challenged before the Supreme Court, the order of the high court setting aside the directions of the labour court under section 6H of the U.P. Industrial Disputes Act. It was argued before the Supreme Court by the appellant that the high court had erred in setting aside the order of the labour court without appreciating that its directions were in fact computation of the benefits that accrued to him under the original award and the proceedings that were dealt with were in the nature of execution proceedings. On the other hand, the case of the management was that the appellant workman had sought equation with regular employees.

The Supreme Court after hearing the submissions on both sides observed that it was well settled law as laid down in *Voltas Ltd.* v. *J.M. Demello*,[26] that as an execution court, a labour court when called upon to compute the benefits claimed by a workman is competent to interpret an award when there is a dispute as to the rights there under or to give correct interpretation in the event of the ambiguity of the award. Although, the labour court cannot make a new award by adding or subtracting there from, it nevertheless is competent to construe the award where it is ambiguous and to ascertain its true precise meaning. Unless, the labour court is given this latitude, it cannot enforce the award when it is called upon to do so by an application under section 33C of the ID Act (same as section 6H of the U.P. Industrial Disputes Act).

The Supreme Court referred to its earlier constitution bench judgment in the *Central Bank of India* v. *Rajagopalan*,[27] in which it was held that a claim under section 33C (2) postulates that while determining the question of computation in terms of money, it may be necessary in some cases to precede with an inquiry into the existence of the right. After referring to the said decision, the court in *Voltas Ltd.,* observed thus:[28]

> Such an inquiry is incidental to the main determination assigned to the Labour Court by that sub-section. While inquiring into the question as to the existence of such a right, and construing the award, the Labour Court can look into the demand by the workmen in order to ascertain whether the award under which the right is claimed was, or was not beyond the scope of the demand; in other words, whether the award was within jurisdiction.

Coming back to the case at hand, the court held that in terms of the settled legal position referred to above, the high court could not have done what it in fact

26 (1971) 2 SCC 479 (hereinafter, referred to as *Voltas Ltd*.).

27 (1963) 3 SCR 140.

28. *Supra* note 26 at 486.

did. The high court should not have set aside the second order of the labour court which merely calculated the amounts due and made consequential directions. The court observed that the labour court, having earlier passed the award after adjudicating the dispute relating to the non-employment of the workman and the rights of the workman having already been crystallised in terms of the award which was upheld by the high court, it should not have set aside the directions of the labour court. The Supreme Court had no hesitation in restoring the directions given by the labour court under section 6H of the U.P. Industrial Disputes Act.

It also directed the management to pay Rs.2,00,000/- as costs to the appellant workman. The court directed the management to comply with its order within four weeks from the date of its judgment and order.

Prohibition under section 36(3) of engaging services of a legal practitioner: Neither arbitrary nor discriminatory

In *Thyssen Krupp Industries India Private Limited* v. *Suresh Maruti Chougule*,[29] a three-judge bench of the Supreme Court was called upon, on a reference made by a two judge bench of the court, to consider the correctness of the view of three judge bench in *Paradip Port Trust*, *Paradip* v. *Their Workmen*,[30] holding that the provision under section 36(3) of the Act, prohibiting legal practitioners from representing the parties in conciliation and adjudication proceedings was in order.

The appellants before the three judge bench contended that the legislative framework under the Act was arbitrary and discriminatory. Further, the restriction on legal representation by advocates violated their right to carry on their profession in courts and tribunals to which they are entitled to under section 30 of the Advocates Act, 1961.

The court examined the judgment in *Paradip Port Trust* and saw no valid reasons to depart from the ratio of the said judgment. It reaffirmed that section 36(3) of the Act, providing restrictions on the right of the legal practitioners on appearing before industrial adjudicatory bodies unless permitted by the tribunal and the opposite party was in order.

A significant argument raised was regarding section 30 of the Advocates Act, 1961, granting the advocate right to practice in all courts and tribunals. The court, however, reaffirmed the principle of *generalia specialibus non derogant*, meaning that a special law (in this case, the Industrial Disputes Act, 1947) prevails over a general law (the Advocates Act, 1961). Since the Act specifically regulates legal representation in industrial matters, it takes precedence over the general right conferred by the Advocates Act. However, the court did not go into the question as raised by the two judge bench that the Advocates Act could not be treated as a general law but was rather a special legislation and the case called for examination of the legal positions of conflict in the provision of two equally

29 (2023) SCC OnLine SC 1707.

30 (1977) 2 SCC 339 (hereinafter, referred to as *Paradip Port Trust*).

important special legislation. It treated the Advocates Act as a general law and did not think it necessary to go into the question of how to resolve conflict in the provisions of two equally important special legislation.

Considering the challenge to the provisions of section 36(3) of the Act, the court observed that the focus should not be on the rights of legal practitioners but on the interests of employers and workmen, who are the primary stakeholders in industrial disputes. The restriction on lawyers was deemed necessary to ensure that industrial adjudication remains accessible, cost-effective, and non-adversarial in nature. The court emphasised that the legal practitioner can appear in the capacity of an officer of the association in the case of an employer and in the capacity of an office-bearer of the union in the case of workmen and not in the capacity of a legal practitioner. Additionally, a writ petition challenging the constitutionality of section 36(4) was dismissed, with the court ruling that no substantial ground was made out to warrant reconsideration of validity of the said provision.

On the merits of the civil appeal, the court noted that the matter had already been settled between the parties. Consequently, it did not require further examination and was disposed of accordingly. In conclusion, the Supreme Court reaffirmed the well-settled legal position that restrictions on legal practitioners appearing in industrial disputes are justified and necessary to uphold the unique framework of industrial adjudication. The judgment reinforced the intent of the Act to provide a fair and less adversarial process for resolving labour disputes, ensuring that access to justice remains equitable for both employers and workmen.

The Supreme Court maintained that the very purpose of this provision is to maintain the power of balance between the employers and employees. It upheld the long-standing restriction on legal practitioners appearing in industrial disputes without the consent of the opposite party and tribunal. This restriction ensures that industrial adjudication remains focused on the interests of workmen and employers rather than being dominated by legal professionals.

By rejecting the constitutional challenge to sections 36(3) and (4) of the Act, the court reinforced the special legal framework designed to protect workers. The decision prevents employers from engaging expensive lawyers to tip the balance against workmen in labour disputes. This safeguards the ability of workers to participate effectively in industrial adjudication through trade unions or other designated representatives rather than through costly legal battles, thereby maintaining a level playing field in industrial dispute resolution.

It is submitted that litigation in labour management disputes, like other fields, in this technological age raise complex issues requiring recourse to the services of the legal professionals. This approach stands endorsed by the view taken by a division bench of two judges in *Hygienic Foods* v. *Jasbir Singh*[31] where the court was of the *prima facie* view that section 36(4) of the Act debarring lawyers from appearing before labour courts or industrial tribunals is unconstitutional being

31 (2011) 4 (UJ) 2149 Supreme Court (hereinafter, referred to as *Hygienic Foods*).

violative of articles 14 and 19(1)(g) of the Constitution of India. This view was taken by the court in recognition of the fact that industrial law has become so complex that a layman cannot possibly present his case properly before the labour courts or industrial tribunals. There is no mention in the present case of this *prima facie* view taken earlier by the two judge bench in *Hygienic Foods*.[32]

III CONCLUSION

The number of cases decided by the apex court in the area of labour management relations in the year under survey shows that not many cases have come for consideration before the apex court on merits for final disposal. In the decisions that have been handed out, there is no decision having jurisprudential significance. Also, no innovative principles of law have been added to the literature in the subject of labour management relations. One can only discern attempt on the part of the court to further elucidate and clarify the already settled principles of law on dismissal or discharge during pendency proceedings under section 33 and the recovery of money proceedings under section 33(C) of the ID Act.

32 *Supra* note 31.