* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 16th May, 2024**

\+ W.P. (C) 12469/2006 and CM APPL. No. 834/2020 & 11739/2021

CENTRAL COUNCIL OF HOMOEOPATHY ..... Petitioner

Through: Mr.___, Advocate
(Appearance not given)

versus

VIJAY SINGH ..... Respondent

Through: Mr.Rajat Arora and Mr.Niraj Kumar, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India seeking the following reliefs:

> *"(i) issue a Writ, Order or Direction in the nature of Certiorari quashing the impugned Order dated 15.05.2006 (Annexure P-1) passed by the Presiding Officer, CGIT;*
> *(ii) issue a Writ, Order or Direction in the nature of Mandamus directing that the impugned Order and all consequential proceedings in pursuance to the impugned Order shall not be given effect in any manner;*
> *(iii) issue any other suitable Writ, Order or Direction which this Hon'ble Court may deem fit and proper to issue in the attendant circumstances of the case be also issued in favour of the petitioner and against the respondent;*
> *(iv) Award the cost of the petition to the Petitioner."*

2. The respondent was appointed as a temporary stenographer with the petitioner w.e.f. 30th January, 1980 in the pre- revised scale of Rs.330-560

and was eventually promoted to the post of senior stenographer on *ad hoc* basis w.e.f. 1st December, 1988 to 31st May, 1989 in the revised scale of Rs.1400-2300 and was regularized on the said post w.e.f. 1st June, 1989.

3. Due to some alleged misconduct committed by the respondent, he was placed on suspension w.e.f. 23rd July, 1996 and on the same day a chargesheet was served upon him. Thereafter, an inquiry officer was appointed to conduct an inquiry into the matter.

4. The inquiry officer submitted its report, pursuant to which, the respondent was compulsorily retired from his services *vide* memorandum dated 19th October, 2000.

5. Thereafter, the respondent raised an industrial dispute wherein, the appropriate government referred the industrial dispute for adjudication to the learned Industrial Tribunal vide order dated 30th November, 1998 on following terms:

> *"Whether the demand made by the Indian Systems of Medicine and Homeopathy Council's Employees Association against the continuous suspension of Shri Vijay Singh by the management of Central Council for Homeopathy, as contained in the application dated 06.05.1997, is legal and justified?"*

6. Pursuant to the competition of the trial, the learned Tribunal vide award dated 15th May, 2006 passed in industrial dispute bearing ID No. 13/99 adjudicated the dispute in favour of the petitioner holding that the respondent workman is not entitled to any relief as prayed for, thereby upholding the continuous suspension of the workman.

7. The respondent then filed a petition bearing no. Misc. Application

1/2003 under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter "Act") alleging that the respondent did not seek permission of the learned Tribunal before compulsorily retiring the respondent during the pendency of the industrial dispute. The learned Tribunal vide order dated 15th May, 2006 held the respondent is an industry and the conduct of the petitioner is punishable under Section 31 of the Act and directed the petitioner to reinstate the respondent w.e.f. 19th October, 2006.

8. Aggrieved by the aforesaid impugned order of the learned Tribunal, the petitioner filed the instant petition seeking quashing of the same.

9. Learned counsel for the petitioner submitted that the learned Tribunal, whilst passing the impugned order, failed into take into consideration the material on record and especially the fact that the industrial dispute vide award dated 15th May, 2006 was decided in favour of the petitioner.

10. It is contended that the learned Tribunal correctly held that the petitioner is not an industry and erred in imposing a penalty upon the petitioner as per Section 31 of the Act.

11. It is submitted that the respondent misconducted by teasing the lady staff of the petitioner as well as by misbehaving with them, forging the signatures of the Secretary of the petitioner and threatening the senior officers of the petitioner.

12. It is further submitted that 53 complaints were made against the respondent and more than 85 memos had been served upon him for various charges. Hence, the petitioner was placed on compulsory retirement.

13. In view of the aforesaid submissions, the learned counsel for the

petitioner submitted that the instant petition may be allowed and the reliefs as sought by the petitioner may be granted.

14. *Per contra*, learned counsel appearing on behalf of the respondent submitted that the impugned award has been passed after taking into consideration the material on record and the present petition may be dismissed being devoid of any merit.

15. It is submitted that during the pendency of the industrial dispute bearing ID no. 13/1999, the petitioner erroneously failed to take any approval or any permission under the Act from the learned Tribunal, thereby, wrongly placing the respondent on compulsory retirement.

16. It is further submitted that the aforesaid action of the petitioner is in contravention of Section 33A of the Act which stipulates that the condition of service of an employee must remain unchanged during the pendency of an industrial dispute.

17. It is submitted that it is a well-settled principle of law that under Article 226, the High Courts have limited jurisdiction to interfere with the industrial award and such jurisdiction may be exercised only in cases when there is any error apparent on the face of it or the award passed by the learned Tribunal is perverse/illegal and the High Courts cannot re-appreciate evidence on record.

18. In view of the aforesaid submissions, the learned counsel for the respondent submitted that the instant petition is without any merit and thus liable to be dismissed.

19. Heard both the parties as well as perused the material on record.

20. It is the case of the petitioner that the learned Tribunal did not take into account the aspect that the industrial dispute vide order dated 15th May, 2006 was decided in favour of the petitioner. It is further submitted that the respondent was a habitual offender and was liable to be compulsorily retired from his services.

21. In rival submissions, it is the case of the respondent that the impugned award does not merit interference of this Court as the learned Tribunal rightly held that the respondent's condition of service was changed during the pendency of the industrial dispute hence, the petitioner acted in violation of the Section 33 of the Act.

22. The short question which falls for adjudication before this Court is whether the impugned order passed by the learned Labour Court merits intervention of this Court.

23. The impugned order is reproduced herein below:

> *"The substantial question is whether the CCH is an Industry or not. The CCS is a body corporate. It carries on systematic activities. It maintains the Central Register of Homeopathy for matters connected therewith so the CCH carries on systematic activities. It is an advisory body of the Government of India in the field of Homeopathy. It is true that the CCH does not carry activities of production, supply or distribution of the material goods and service. It is an Industry in view of the decision of the Apex Court in Bangalore Water Supply. It has been held in this case.*
>
> *X X X*
>
> *Section 31 (b) expressly provide that the service conditions cannot be altered say with the expressed provision in writing of the authority before which the proceeding is pending in regard to any matter connected with the dispute. ID No. 13/99 is pending and it is*

about continuous suspension. The workman was compulsorily retired so the matter is connected with the dispute. The employer has altered that the prejudice of the workman by pendency of dispute regarding the same matter. So order dated 19.10.2000 is inoperative. It may have been passed by way of victimization or unfair labour practice. Such an action cannot become a bonafide action until permission is taken from this Tribunal.

X X X

It has been held in Bangalore Water Supply that in an Industry there should be systematic activity and it should be organized by cooperation between the employer and the employees and it should be for production and/or distribution of goods and service calculated to satisfy human wants and wishes. It has been held that absence of profit motive or gainful objective is irrelevant. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer and employee relations. If an organization is carrying on trade and business, it is not beyond the purview of Industry activities.

If the triple tests as laid down by the Constitution Bench Judgment is applied in this case the respondent management is obviously an Industry. The workman was appointed as Steno and he performed services for a pretty long time. There was employer and employee relationship between the workman and the management. The respondent carries on systematic activity in the field of Homeopathy. There is an organization of 37 employees and they are acting in cooperation with each other. The respondent management is an employer and the workman is an employee. There is direct relationship of employer and employee. The respondent management is not engaged in production or distribution of goods but it carries on the activity of distribution of services. It provides service to the Central Government as has been stated in the written statement.

It has been held in this case that absence of profit motive or gainful objective is irrelevant. It implies that if an undertaking is not entrusted with production and supply of goods but it is carrying on

some sort of activities and it is rendering services to the Government, it is an Industry. All the triple tests laid down by the Hon'ble Apex Court judgment are fulfilled. The respondent management is Central Council of Homeopathy. It maintains register and it advices the government on the subject of Homeopathy. It has enrolled 37 employees. It is carrying on systematic activities with these employees as such there is employer and employee relationship and the decisive test is the nature of activity. An undertaking which carries philanthropy activities is also an Industry. Manufacture of goods, supply of goods, trade and business for means of profit are irrelevant for an undertaking to be an Industry. The respondent management in view of the criteria laid down by the Hon'ble Apex Court judgment is an Industry. Its employees are workmen. They are not discharging sovereign function or the function of Police. They are not holding Civil Posts directly under the Government. Such employees are industrial workmen. The law cited by the respondent management is not applicable in the facts and circumstances of the present case. It is held that the respondent management is very much an Industry. As held above the management has acted in contravention of section 33 (1) (b) of the ID Act. The order is inoperative and ineffective. Inevitable consequence is that the workman will be deemed still in service in the eye of law. Submissions were made regarding the mention of proper section of the ID Act and proper format of the complaint. The crux is that the workman has been punished and his service condition has been altered during the pendency of the dispute; Section 33 of the ID Act comes into operation. It is also established that the respondent is an industry. It is also held that the order of compulsory retirement was passed on 19.10.2000 while pendency of the dispute regarding the validity of suspension. While pendency of the dispute the respondent in utter breach of section 33 (1) (b) has passed order of compulsory retirement dated 19.10.2000. The order is illegal, malafide and inoperative in the eyes of law. It is held that the respondent has committed breach of section 33 of the ID Act and it is punishable under section 31 of the

said Act. The workman deserves to be reinstated with full back wages from the date of order of compulsory retirement i.e. 19.10.2000. The management is directed to reinstate the workman and pay him arrears of his entire wages w.e.f. 19.10.2000 within one month from the date of publication of the award."

24. Upon perusal of the above, it is made out that the learned Tribunal adjudicated firstly upon the issue whether the petitioner is an industry under Section 2(j) of the Act, and observed that although it is an admitted fact that the petitioner does not carry the activity of production, supply or distribution of the material goods and services and the petitioner is an advisory in the field of homeopathy of the Government of India, however, it is an industry in view of the judgment passed by the Hon'ble Supreme Court in the judgment of ***Bangalore Water Supply and Sewerage Board v. A. Rajappa,* (1978) 2 SCC 213**, wherein, it was held that an organization is an industry since its work involves cooperation of employer- employee and it is for the production and/or distribution of goods and services to satisfy human needs. Hence, an establishment which carries on philanthropic work is also an industry.

25. The learned Tribunal further held that Section 31(b) of the Act elucidates that the service condition cannot be changed by an express written provision when an industrial dispute is pending.

26. In the instant dispute, the learned Tribunal held that an industrial dispute was pending adjudication before a Learned Court/Tribunal and during the pendency of the said dispute, the petitioner passed the order dated 19th October, 2000 directing the respondent to be kept on compulsory

retirement. Hence, the petitioner acted in violation of the principles of Section 33 of the Act.

27. Accordingly, the learned Tribunal held that the petitioner is an industry and it committed a breach of Section 33 of the Act by ordering compulsory retirement of the respondent workman during the pendency of the abovesaid industrial dispute and hence, the same is punishable under Section 31 of the Act. It further directed the petitioner to reinstate the respondent with back wages from the date of the order of the compulsory retirement i.e., 19th October, 2000.

28. At this juncture, this Court will reiterate the definition of industry under Section 2(j) of the Act and the same is reproduced herein below:

> *"(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;"*

29. Upon perusal of the aforesaid definition, it can be inferred that the term "industry" includes within its ambit any service or employment. This Court finds it germane to refer to the judgment of ***Bangalore Water Supply and Sewerage Board* (*supra*)**, wherein, it was held that the research institute falls within the definition of "Industry" as defined under the Act. The relevant portion of the judgment is reproduced herein below:

> ***"113.*** *"Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the*

nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money aplenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organisation, propelled by systematic activity, modelled on cooperation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries."

30. The Hon'ble Supreme Court observed in the aforesaid judgment that the research institutes fall within the definition of "industry" since they are working in a systematic way, with the cooperation of the employer-employee with a motive to do such inventions which are for their benefit as well as the country in terms of the of goods and services and wealth. Therefore, despite the fact that the research institutes operate with a non-profit motive, they are deemed as industries.

31. In the instant petition, the petitioner being a research – institute working in the field of homeopathy for the Government of India, is working

with the cooperation of the employer- employee in a systematic way and for the betterment of the homeopathy department of the country, hence, it falls within the ambit of "Industry" under the Act. Hence, the learned Tribunal correctly held that the petitioner is an industry as per the Act.

32. This Court shall now delve into the interpretation of Section 33 and Section 33-A of the Act and its scope. Relevant portion of the said provisions are 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 2[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) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,*
> *save with the express permission in writing of the authority before which the proceeding is pending.*
> *(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 2[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman],*
> *(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement*

of such proceeding; or

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute--

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation.--For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being 3[a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-section (3) shall be one per cent. of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the

distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, 4[an arbitrator, a] labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, 5[within a period of three months from the date of receipt of such application], such order in relation thereto as it deems fit:]

6[Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.]

Section 33A: Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings. *–*

"Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention may, make a complaint in writing, in the prescribed manner, –

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint,

the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly."

33. Section 33 of the Act elucidates that the conditions of service of a workman shall remain unchanged during the pendency of an industrial dispute. The two exceptions carved out in this regard is *firstly*, to alter in regards to any matter which is not connected with the dispute and *secondly*, for matter pertaining to any misconduct is not connected with the dispute.

34. Section 33-A is a special provision and procedure which aims to adjudicate as to whether conditions of a service, etc. have been changed during the pendency of proceedings before an Industrial Tribunal,

35. The essential requirements for maintainability of a complaint under Section 33-A, held, consideration of two aspects, viz., *firstly*, whether there was any violation of Section 33, and *secondly*, whether the act complained of was justified or not.

36. This Court is of the view that the learned Tribunal correctly held that as per Section 33 of the Act, the industry cannot alter the service conditions of the workman unless the same does not cause prejudice to the workman or the alteration in their working condition is done on the grounds of the misconduct which does not pertain to the industrial dispute.

37. In the instant case, the respondent workman was compulsorily retired

on 19th October,2000 despite the fact that the industrial dispute ID no.13/1999 was pending adjudication before the learned Tribunal therefore, the petitioner acted in contravention of Section 33 of the Act and is duly liable to be punished under Section 31 of the Act.

38. It is opined by this Court that the learned Tribunal rightly held that the respondent workman shall be reinstated along with the back wages w.e.f. 19th October, 2000.

39. Therefore, taking into consideration the observations made in the foregoing paragraphs, it is held that the petitioner has been unable to put forth any propositions to make out a case in its favour. This Court is of the view that the learned Court has rightly adjudicated upon the dispute raised before it and there is no illegality of any kind thereto as it has passed the impugned order after taking into consideration the entire facts and circumstances available before it.

40. In view of the aforesaid discussions, this Court is of the view that the impugned award dated 15th May, 2006 passed by the learned Tribunal in Misc. Appl. No. 1/2003 in ID no. 13/ 1999 does not suffer from any illegality or infirmity and is accordingly upheld.

41. The instant petition being devoid of any merit is dismissed along with pending applications, if any.

42. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

May 16, 2024/Rk/db/ryp